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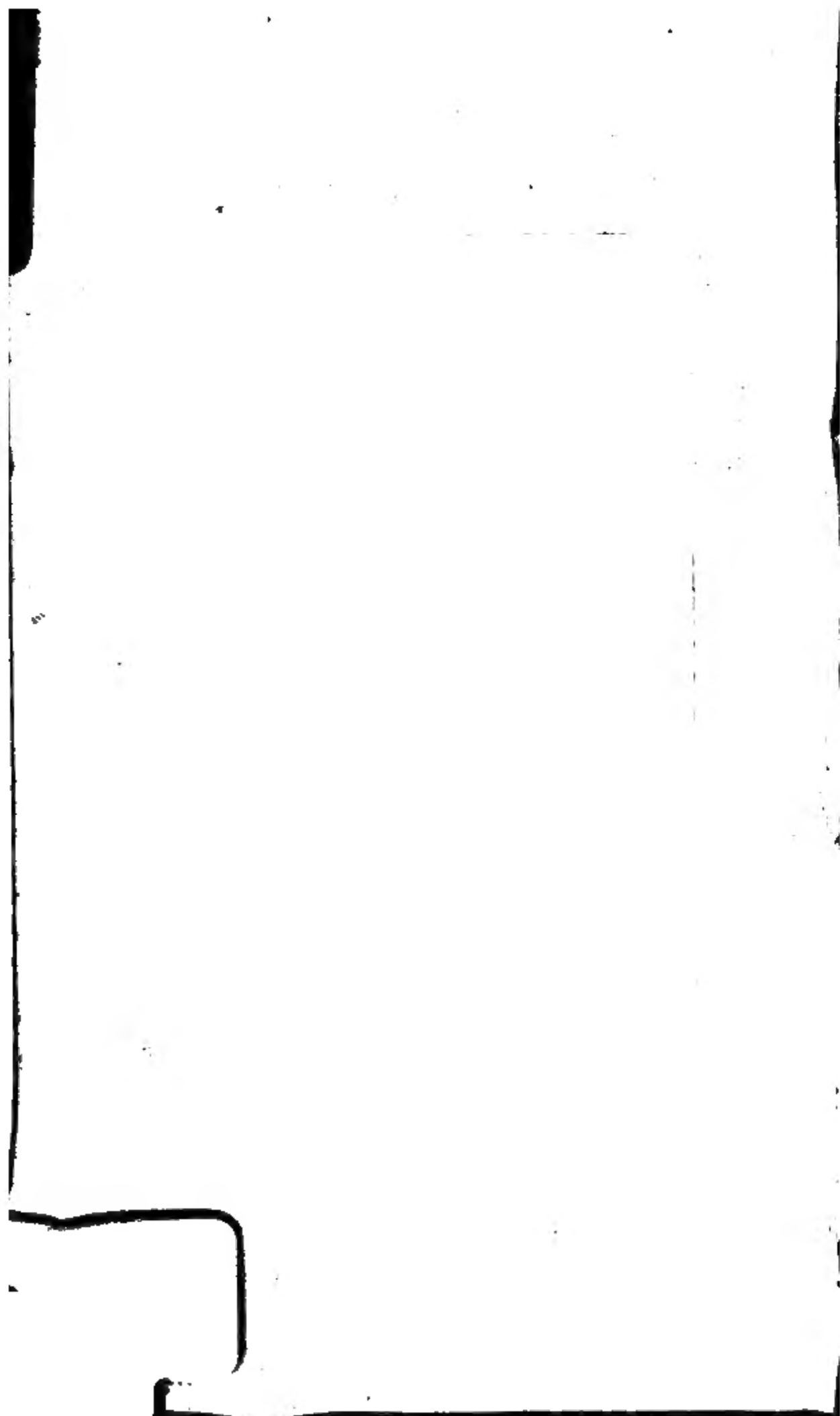
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Fig. 1.

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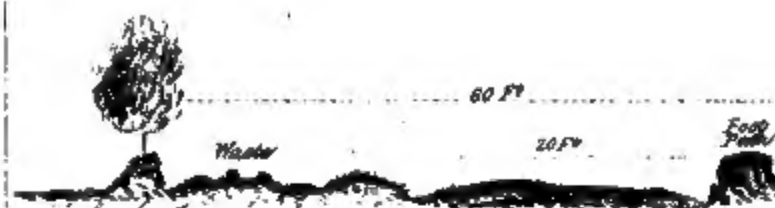


Fig. 2



Fig. 3.

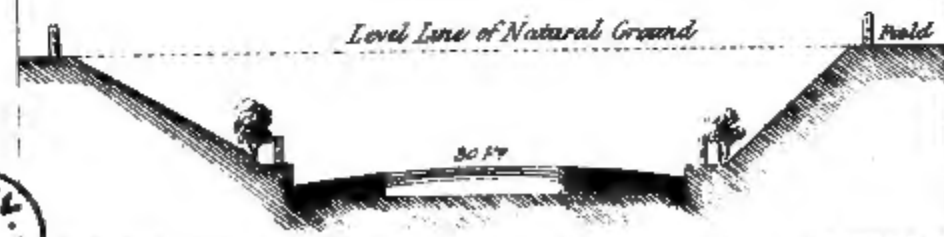
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Fig. 4



Fig. 5

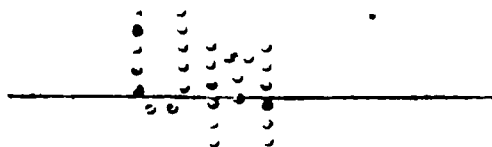


THE
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WITH
NOTES, FORMS, &c.

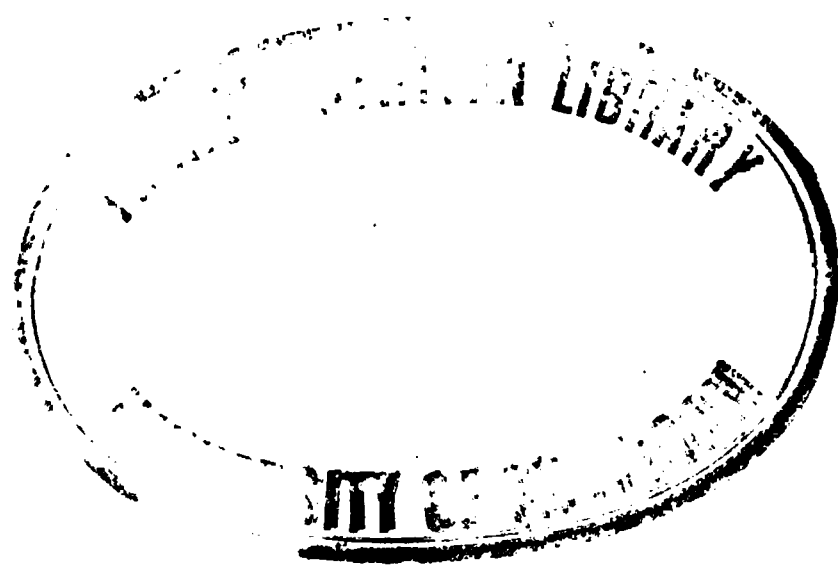
By ^{Joseph} J. BATEMAN, LL.D.,
OF LINCOLN'S INN, BARRISTER-AT-LAW.

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1854.



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TO

The Third Edition.

THE following pages contain the whole of the existing General Acts upon the subject of Turnpike Roads, with the usual facilities for reference; the repealed and repealing clauses, and those of a temporary or formal character, being distinguished from the other sections by being printed in a different sized type, and such observations being added as appeared necessary to explain the different enactments.

In the first and second editions of this work it was deemed necessary to refer to the former General Laws relating to Turnpike Roads, and to explain the reasons for the extensive alterations upon the subject which had then recently been effected; but as a great portion of the present law has now been for some time before the public, the references and explanations referred to have been omitted, to make room for what has been considered more important matter. The question at the present day is not, what the law upon this subject has been, but, what it is; and amidst the multiplicity of enactments which

have been passed, and the partial repeals and alterations which have taken place since the last general repeal, the first consideration has been, how to render this question as easy of solution as possible.

In this, as in the former Editions, the object of the Editor has been to render the Work as useful as possible, as well to the Profession as to the trustees and officers of Turnpike Roads. With this view he has added various forms and other matters of a practical nature; and he trusts that the want of arrangement in the Statutes will be in a great measure supplied by the Digest and Tables at the commencement, and a copious Index at the end of the Volume.

December, 1835.

ADVERTISEMENT

TO

The Fourth Edition.

THIS useful little Work having been for some time out of print, it has been thought that a new Edition of it may be acceptable.

The Editor has adhered to the plan of printing the Statutes in chronological order, having found in his own practice, that this (with the aid of a full Index) is the most convenient arrangement for reference, although a digested arrangement of the subjects may be a more philosophical one.

The Statutes have been brought down to the commencement of the present Session of Parliament, and all the authorities relating to the subject of the Work, down to the most recently published Reports, have been inserted in the Appendix, or referred to in the Notes.

TEMPLE, *June*, 1854.

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ERRATUM.

Page 361, line 8 from bottom, for or read and.

THE
GENERAL TURNPIKE ROAD ACTS.

3 GEO. IV. CAP. 126.

*An Act to amend the General Laws now in being for
regulating Turnpike Roads in that part of Great
Britain called England(a).*

[6th August, 1822.]

WHEREAS the laws now in force for the general regulation of turnpike roads in that part of Great Britain called England are found to be ineffectual, and require amendment; wherefore, for remedy thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same,

REPEAL.
—

(a) A turnpike road is a highway, upon which gates or barriers are set up, and tolls collected; the distinctive mark of a turnpike road being the right of turning back any person who refuses to pay the toll. (See 8 T. R. 350; 6 M. & W. 438; 5 A. & E. 692; 11 Sim. 42). These ways are popularly called *Turnpike Roads*, to distinguish them from other parish roads. But this is not a legal term of distinction, for all roads are parish roads, highways being converted into turnpike roads through the application of a new principle, distinguished from the regulations applicable to parish roads by the collection of tolls and the general management. Under the simple system of the common law, whenever a

Nature of
general turn-
pike laws.

REPEAL.

The following
Acts repealed,
viz.

13 G. 3, c. 84.

14 G. 3, c. 14.

That, from and after the first day of January, one thousand eight hundred and twenty-three, an Act passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled "An Act to explain, amend, and reduce into one Act of Parliament, the general Laws now in being for regulating the Turnpike Roads in that part of Great Britain called England, and for other Purposes" (b); and also an Act passed in the four-

highway was out of repair, the inhabitants of the parish were bound, by actual labour thereon, to reinstate it in good order. Under the Highway Acts, a *ministerial* agent is appointed to superintend the management of highways; actual labour is permitted to be compounded for in money; and a power is given to raise funds by assessment for effecting those repairs, or for other improvements to which the common law provisions may prove inadequate; whilst by the Turnpike Acts an additional body are appointed, who are made, as it were, the proprietors of the road, but nevertheless upon trust for the public. They are empowered to bargain and sell, and to enter into stipulations to raise money by mortgage, and, which is the most important of their privileges, they are authorised to levy a tax, the receipts of which are to be applied to the repair and improvement of the roads which are placed under their management: 3 *Burn's Justice*, 642; *Well-beloved on Highways*, 180. The turnpike roads of England are placed under the management and direction of certain trustees, who are usually appointed by the respective Acts of Parliament occasionally passed for the making and repairing particular roads. But the powers of these Acts being confined to separate and distinct objects, it was thought expedient to pass some general laws, which apply in common to all trustees and turnpike roads throughout the kingdom. These general Acts, however, do not extend to all roads upon which tolls are taken, for roads made under a statute passed for an unlimited period are exempted from their operation, as well as all roads which are not under the care of trustees, and some turnpike roads expressly mentioned. See 3 G. 4, c. 126, s. 149; 4 G. 4, c. 95, ss. 90—93; 9 G. 4, c. 77, s. 20.

Former general turnpike road Acts.

(b) Previously to the passing of the 3 G. 4, c. 126, the Act here cited and repealed had been known as the "General Turnpike Road Act," to which all the subsequent Acts had reference, and the provisions of which they were respectively designed to explain or improve. This Act (13 G. 3) repealed a former General Turnpike Road Act, 7 G. 3, c. 40, which (with very few and trifling

teenth year of his said late Majesty's reign, intituled "An Act to repeal a Clause in an Act made in the thirteenth year of his present Majesty's reign, intituled 'An Act to explain, amend, and reduce into one Act of Parliament, the general Laws now in being for regulating the Turnpike Roads in that part of Great Britain called England, and for other Purposes,' which regulates the Width of the Wheels, and the Length of Carriages liable to be weighed, and for indemnifying Persons who have offended against the said Clause;" and also an Act passed in the fourteenth year of his said late Majesty's reign, intituled "An Act to explain and amend an Act made in the thirteenth year of his present Majesty's reign, intituled 'An Act to explain, amend, and reduce into one Act of Parliament, the general Laws now in being for regulating the Turnpike Roads in that part of Great Britain called England, and for other Purposes,' so far as the same relates to the continuing and granting an additional term of Five Years to Acts made for amending Turnpike Roads;" and also an Act made in the fourteenth year of the reign of his said late Majesty, intituled "An Act to repeal so much of an Act made in the last Session of Parliament, for reducing into one Act the general Laws relating to Turnpike Roads, as exempts Persons from the Payment of Tolls at Side Gates erected at Places specified in any Act of Parliament;" and also an Act made in the fourteenth year of his said late Majesty's reign, intituled "An Act for explaining and altering an Act made in the thirteenth year of his present Majesty, intituled 'An Act to explain, amend, and reduce into one Act of Parliament the general Laws now in being for regulating the Turnpike Roads in that Part of Great Britain called England, and for other Purposes,' so far as the same relates to the Payment of additional Tolls at Weighing Engines, and the number of Horses to be used in Carriages drawn on Turnpike Roads, and for allowing certain Exemptions with respect to Weight and Payment of Toll in particular Cases;" and also an Act passed in the sixteenth year of his said late Majesty's reign, intituled "An Act for repealing a Clause in an Act made in the thirteenth year of the reign of his

REPEAL.

14 G. 3, c. 36.

14 G. 3, c. 57.

14 G. 3, c. 82.

16 G. 3, c. 39.

exceptions) was the whole of the statute law in force upon the subject. By it (7 G. 3) were repealed, so much of 1 G. 2, st. 2, c. 19; 5 G. 2, c. 33; 8 G. 2, c. 20; and 14 G. 2, c. 42, as related to turnpike roads; the 21 G. 2, c. 28; 3 W. & M. c. 12, except so much as related to the price or carriage of goods; the 24 G. 2, c. 43, except what related to the preventing mischief occasioned by drivers riding on their carts, &c., in London; the 26 G. 2, c. 30; 28 G. 2, c. 17, except so much as continued the Acts then made for repairing and amending roads; the 30 G. 2, cc. 27 & 28; 31 G. 2, c. 34; 5 G. 3, c. 38; and 6 G. 3, c. 43.

REPTAL.
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- present Majesty, intituled ‘An Act to explain, amend, and reduce into one Act of Parliament the general Laws now in being for regulating the Turnpike Roads in that Part of Great Britain called England, and for other purposes,’ which relates to the Countersinking of the Tire of the Wheels of all Waggon, Wains, and other Carriages to be used on Turnpike Roads; and for explaining a provision in the said Act with respect to the Fellies and Tire of Carriages having the Fellies of the Wheels of the
- 16 G. 3, c. 44. Gauge of Six Inches or upwards;” and also an Act passed in the sixteenth year of his said late Majesty’s reign, intituled “An Act for suspending, for a limited Time, so much of an Act made in the thirteenth year of his present Majesty’s reign, intituled ‘An Act to explain, amend, and reduce into one Act of Parliament the general Laws now in being for regulating the Turnpike Roads in that Part of Great Britain called England, and for other purposes,’ as is to subject Carriages having the Fellies of the Wheels thereof of less Breadth or Gauge than Six Inches to the Payment of Double Tolls, and for vacating Contracts for leasing Tolls;”
- 17 G. 3, c. 16. and also an Act passed in the seventeenth year of his said late Majesty’s reign, intituled “An Act for limiting the Exemptions from Tolls (granted by any Act or Acts of Parliament for repairing Turnpike Roads), on account of Cattle going to and from
- 18 G. 3, c. 28. Water or Pasture;” and also an Act passed in the eighteenth year of his said late Majesty’s reign, intituled “An Act for repealing so much of an Act made in the thirteenth year of his present Majesty’s reign, intituled ‘An Act to explain, amend, and reduce into one Act of Parliament the general Laws now in being for regulating the Turnpike Roads in that part of Great Britain called England, and for other purposes,’ as is to subject Carriages having the Fellies of the Wheels thereof of less Breadth or Gauge than Six Inches to the Payment of Double Tolls, and for
- 18 G. 3, c. 63. vacating Contracts for leasing Tolls;” and also an Act passed in the eighteenth year of his said late Majesty’s reign, intituled “An Act for enabling Trustees under particular Turnpike Acts to meet and carry such Acts into execution, notwithstanding they may not have met or adjourned agreeable to the Directions of such Acts, and for preventing Disputes touching the Payment of Tolls for Horses or Carriages belonging to or employed by Officers or Soldiers on
- 21 G. 3, c. 20. Duty;” and also an Act passed in the twenty-first year of his said late Majesty’s reign, intituled “An Act for declaring certain Provisions of an Act made in the thirteenth year of his present Majesty, relating to the Turnpike Roads in that part of Great Britain called England, to extend to all Acts made and to be made for repairing Roads subsequent to the passing of the said
- 25 G. 3, c. 57. Act;” and also an Act passed in the twenty-fifth year of his said late Majesty’s reign, intituled “An Act to exempt Carriages carrying the Mail from paying Tolls at any Turnpike Gate in
- 52 G. 3, c. 145. Great Britain;” and also an Act passed in the fifty-second year of his said late Majesty’s reign, intituled “An Act to explain the Exemption from Toll in several Acts of Parliament, for Carriages

employed in Husbandry, and for regulating the Tolls to be paid on other Carriages, and on Horses, in certain other Cases therein specified ;” and also an Act passed in the fifty-third year of his said late Majesty’s reign, intituled “ An Act to amend an Act made in the fifty-second year of his present Majesty’s reign, intituled ‘ An Act to explain the Exemption from Toll in several Acts of Parliament, for Carriages employed in Husbandry, and for regulating the Tolls to be paid on other Carriages and on Horses in certain other Cases therein specified,’ and for other Purposes relating thereto;” and also an Act passed in the fifty-fifth year of his said late Majesty’s reign, intituled “ An Act to enable the Trustees of Turnpike Roads to abate the Tolls on Carriages, and to allow of their carrying extra Weights in certain cases;” and also an Act passed in the fifty-seventh year of his said late Majesty’s reign, intituled “ An Act to explain and amend an Act of the fifty-third year of his present Majesty, relating to Tolls on Carriages used in Husbandry, and to remove Doubts as to Exemption of Carriages not wholly laden with manure from payment of Toll;” shall be and the same is and are hereby repealed (c).

REPEAL.

53 G. 3, c. 82.

55 G. 3, c. 119.

57 G. 3, c. 37.

II. Provided always, and be it enacted, that nothing herein contained shall extend, or be construed to extend, so as to revive or give any force or effect to any Act or Acts repealed by the said recited Acts, or any of them, but such Acts shall be and continue repealed, in such and the like manner as if this Act had not been made.

Not to revive repealed Acts;

III. Provided always, and be it further enacted, That nothing herein contained shall extend, or be deemed or construed to extend, to prevent the suing for and recovery of any penalty incurred by any offence committed against the provisions of the said hereinbefore recited Acts, or any of them, previous to the repeal of the said Acts in and by this Act, or to prevent or defeat any prosecution commenced or to be brought for such offence, but all penalties incurred may be sued for, and all encroachments, nuisances, and other offences made or committed previous to the repeal of the said Acts, against the provisions of the said recited Acts, or any of them, may be abated or prosecuted in the same manner to all intents and purposes as if this Act had not been passed.

nor to prevent the recovery of penalties incurred for offences against Acts repealed.

IV. And whereas it is of great importance that one uniform system should be adhered to in the laws for

After Jan. 1, 1823, this Act to extend

(c) The only Act affecting turnpike roads in general, passed between 13 G. 3, c. 78, and the present Act (other than those repealed), was 1 G. 4, c. 95, “ for obtaining returns from turnpike road trusts of the account of their revenues and expense of maintaining the same,” which was of a temporary nature, and expired in December, 1820.

EXTENT OF
GENERAL
LAWS.

to all local
Acts for mak-
ing and re-
pairing turn-
pike roads.

regulating the management and maintenance of turnpike roads throughout the kingdom (*d*); be it therefore enacted, That, from and after the first day of January, one thousand eight hundred and twenty-three, all the enactments, provisions, matters, and things in this Act contained, shall extend, and be deemed, construed, and taken to extend, to all Acts of Parliament now in force, and to all Acts which shall hereafter be passed, for making, widening, turning, amending, repairing, or maintaining any turnpike road or roads in that part of Great Britain called England, save and except where any other commencement is particularly directed by this Act, and as to such enactments, provisions, matters, and things as shall be expressly referred to, and varied, altered, or repealed by any such Act or Acts as shall be hereafter passed (*e*).

(*d*) See *R. v. Great Dover Street Road Trustees*, 5 Ad. & E. 692.

Extent of the
general laws.

(*e*) See also 4 G. 4, c. 95, s. 88, and 9 G. 4, c. 77, s. 19, by which latter Act it is provided, not only that the general laws shall be extended to local Acts, as in the above sections, but also that such general laws shall no longer be recited in local Acts, except such powers as shall be expressly referred to for the purpose of being altered or repealed. The object of these general enactments has been stated to be "the embodying of the former Acts in one; endeavouring to establish one uniform system of law applicable to all turnpike roads in the country; the encouragement of the use of carriages of a construction less injurious to the roads; the regulation of the officers of the trusts, and of lessees and collectors of tolls; the checking extravagant expenditure of the funds, by providing for the properly keeping and publishing the accounts; and the reduction of the expense of passing local Acts, by curtailing their length and giving facilities to the proofs of matters of form before the committee to whom they are referred, thus preventing the expense of bringing witnesses for the purpose." The great difficulty in attaining these objects with any degree of uniformity is in the present system of local legislation, which, as the general statutes are from time to time passed, continually counteracts their operation, each of the roads having its private Act, and frequently its separate legislator, who often prepares his bill according to his own ideas, and with little regard to the general law: *Dehany on Highways*. It was formerly decided, that a

V. And be it further enacted, That, from and after the first day of January one thousand eight hundred and twenty-six, if the tire or tires of any wheel or wheels of any waggon, cart, or other such carriage, which shall be used or drawn on any turnpike road, shall not be so made or constructed as not to deviate more than half an inch from a flat or level surface in wheels exceeding six inches in breadth, or more than one-quarter of an inch from a flat or level surface in wheels less than six inches in breadth, or in case the several nails of the tire or tires of every such wheel or wheels shall not be so countersunk as not to project above one quarter of an inch above the surface of such tire or tires, then and in every such case the owner of every such waggon, cart, or other such carriage, shall for every such offence forfeit and pay the sum of five pounds, and every driver thereof the sum of forty shillings.

**CARRIAGE
WHEELS.**

After Jan. 1, 1826, all wheels of carriages to be of the construction herein mentioned.

[*Repealed* by 4 G. 4, c. 95, s. 1.]

local Act, containing enactments contrary to the general law, operated as a repeal of so much of the general law as was inconsistent with it: *Ridge v. Garlick*, 2 Moore, 481; 8 Taunt. 424. Under the present general laws, it has been held that a local Act is not repealed by the general Act, where they are not repugnant to each other: *Pearse v. Morrice*, 2 Ad. & E. 84, 4 Nev. & M. 49; but where a local Act, passed before the general Act, contained a provision inconsistent with the latter, such provision was held to be superseded. "The effect of the General Turnpike Act is to incorporate that statute with all particular Acts; and therefore, if the general provisions are inconsistent with those in the local Act, the latter must be considered as not continued, otherwise the very evil would ensue which that Act was intended to prevent, namely, the want of uniformity in the laws regulating turnpike roads throughout the kingdom:" *Denman, C. J., Rex v. Northleach and Witney Road Trustees*, 5 B. & Ad. 978. It may here be noticed, with regard to the proof necessary upon proceedings under a local Act, that, by a recent statute, all private and local and personal Acts of Parliament, if purporting to be printed by the queen's printer, shall be admitted as evidence thereof, without any proof that such copies were so printed: 8 & 9 Vict. c. 113, s. 3. Further, where a private statute contains a clause declaring it to be a public Act, and that it shall be taken notice of as such without being specially pleaded, it is not now necessary to prove either that it has been examined with the Parliament roll, or that it has been printed by the queen's printer; the production of the Act is sufficient: *Woodward v. Cotton*, 1 C. M. & R. 45; *Beaumont v. Mountain*, 10 Bing. 404. See Forms of Notices and Petitions for a Private Bill, Appendix, Nos. 37, 38.

**CARRIAGE
WHEELS.**

Penalty on
using cart
wheels of less
breadth than
three inches.

[*Repealed by*
4 G. 4, c. 95,
s. 3.]

VI. And be it further enacted, That, from and after the first day of January, one thousand eight hundred and twenty-six, no waggon or other such carriage shall be allowed to travel or be used on any road, with the fellies of the wheels thereof of a less breadth than three inches; and from and after the day and year last mentioned, if any waggon or other such carriage, having the fellies of the wheels thereof of less breadth than three inches shall be used or drawn on any turnpike road, the owner of every such waggon or other such carriage so used, shall, for every such offence, forfeit and pay any sum not exceeding five pounds, and every driver thereof, not being the owner, any sum not exceeding forty shillings.

After Jan. 1,
1823, wag-
gons, &c. hav-
ing the fellies
of wheels of
less breadth
than four and
a half inches
to pay one
half more
than the toll
payable on
waggons, &c.,
having six-
inch wheels.

Where the
wheels shall
be four and a
half inches,
and less than

VII. And be it further enacted, That, from and after the said first day of January, one thousand eight hundred and twenty-three, the trustees or commissioners appointed by virtue or under the authority of any Act or Acts of Parliament made or to be made for making or maintaining any turnpike road, shall, and they are hereby required to demand and take, or cause to be demanded and taken, for every waggon, wain, cart, or other such carriage, having the fellies of the wheels thereof of less breadth than four and a half inches at the bottom or soles thereof, or for the horse or horses or cattle drawing the same, one half more than the tolls which are or shall be payable for any carriage of the same description, having the wheels thereof of the breadth of six inches (*f*); and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth of four and a half inches,

Additional
tolls.

(*f*) The amount of the single toll payable upon turnpike roads is fixed by the local Act, and many of such Acts also impose additional tolls on carriages, &c. travelling on Sundays, or carrying particular kinds of commodities, and on other accounts. The additional tolls granted by the above section are applicable to all turnpike roads, except where it is otherwise stated in the local Act, and except such as are excluded from the operation of the general laws. See ante, note (*a*), p. 1. As to additional tolls in respect of overweight, see 3 G. 4, c. 126, s. 15; 4 G. 4, c. 95, s. 89; 2 & 3 Vict. c. 46, &c. As to additional tolls for watering roads, see 3 G. 4, c. 126, s. 120; and as to double tolls, 2 & 3 W. 4, c. 124, s. 1. And see further as to restrictions on weights and wheels of carriages, 4 G. 4, c. 95, s. 6, &c.

and less than six inches at the bottom or soles thereof, or for the horse or horses or other cattle drawing the same, one-fourth more than the tolls or duties which are or shall be payable on any carriage of the like description, having the wheels thereof of the breadth of six inches, by any Act or Acts of Parliament now in force, or hereafter to be passed, for making or maintaining any turnpike road, before any such waggon, wain, cart, or other carriage respectively shall be permitted to pass through any turnpike gate or gates, bar or bars, where tolls shall be payable by virtue of any such Acts(g).

CARRIAGE
WHEELS.

six inches in
breadth,
one-fourth
more toll
shall be paid.

VIII. Provided always, and be it further enacted, That, where any particular Act or Acts of Parliament now in force for the making, repairing, or maintaining any turnpike road, shall direct an higher rate of toll or tolls to be taken on any waggon, wain, cart, or other such carriage, having the fellies of the wheels thereof of less breadth than six inches, and such higher rate is more than the addition which is hereinbefore directed to be taken, such higher rate of tolls in and by such Act or Acts imposed shall continue to be levied and collected on the road or roads to which the said Act or Acts relate, in the proportions therein fixed.

As to Acts
now in force.
[Repealed by
4 G. 4, c. 95,
s. 4.]

IX. And be it further enacted, That, where any waggon or cart shall have the sole or bottom of the wheels thereof rolling on a flat surface, and the nails of the tire of such wheels countersunk and be cylindrical (that is to say) of the same diameter on the inside next the carriage as on the outside, so that when such wheels shall be rolling on a flat or level surface the whole breadth thereof shall bear equally on such flat or level surface, and shall have the opposite ends of the axletrees of such waggon, cart, or other carriage, so far as the same shall be inserted into the respective naves of the wheels thereof, horizontal, and in the continuance

Where wag-
gons or carts
are con-
structed in a
particular
manner,
trustees may
make order
that the toll
to be taken
shall not be
less than
two-thirds of
the full toll.

(g) See *Ridge v. Garlick*, 2 Moore, 481, 8 Taunt. 424. For the exemptions from these additional tolls, see 4 G. 4, c. 95, s. 19; and ss. 5 and 6 of that Act, as to where there has been a different scale of tolls under prior enactments or local Acts. And see *Pickford v. Davis*, 1 Bing. N. C. 141.

**CARRIAGE
WHEELS.**
—

of one straight line, without forming any angle with each other, and in each pair of wheels belonging to such carriage, the lower parts when resting on the ground shall be at the same distance from each other as the upper parts of such wheels, it shall and may be lawful for the trustees or commissioners of any turnpike road, at a general meeting, if they shall think fit so to do, to make an order for every such waggon and cart to pass through any toll-gate or bar under the superintendence of the trustees or commissioners making such order, upon paying only so much of the tolls and duties as shall not be less than two-thirds of the full toll or duty payable by any turnpike Act on such waggon, cart, or other carriage, and the horse or horses or cattle drawing the same (*h*).

Proviso as to
coaches, &c.
[*Repealed by*
4 G. 4, c. 95,
s. 38.]

X. Provided always, and be it further enacted, That nothing herein contained relating to the breadth of the wheels of carriages, or to the tolls payable thereon, shall extend or be construed to extend to any chaise marine, coach, landau, berlin, barouche, sociable, chariot, calash, hearse, break, chaise, curricule, gig, chair, or taxed cart, market cart, or other cart for the conveyance of passengers or light goods or articles.

Power to
trustees to
measure
wheels.

XI. And be it further enacted, That it shall and may be lawful for any trustee or commissioner of any turnpike road, and for every collector or his deputy or deputies, or other person acting by or under the authority of the trustees or commissioners of any turnpike road, or of their lessee or lessees of tolls, to measure and examine, or cause to be measured and examined, the breadth and construction of the wheels of every waggon, cart, or other such carriage passing on such turnpike road; such measurement and examination to take place, if the trustee, commissioner, or other authorised persons making the same shall so require, previously to such waggon, cart, or other carriage being

(*h*) When there is a scale of tolls adapted to the width of wheels, and additional tolls under 13 G. 3, c. 84, have not been collected, the scale of tolls imposed by the local Act is to continue: 4 G. 4, c. 95, s. 6.

allowed to pass through any toll-gate or bar at which toll shall be payable; and if any owner or driver of any such waggon, cart, or other carriage, shall turn or drive out of the road, in order to avoid or evade the measuring of the wheels of such waggon, cart, or other carriage, or if any such owner, driver, or any other person, shall refuse to allow the wheels of any such waggon, cart, or other carriage to be measured, and the construction thereof examined, or shall attempt to pass through any toll-gate or bar before such measurement and examination shall be made (the same having been required), or shall in any way hinder or obstruct any such trustee or commissioner, or other authorised person, in making such measurement and examination, every such owner, driver, or other person so misbehaving, shall for every such offence forfeit and pay any sum not exceeding five pounds; and that it shall not be lawful for any such waggon, cart, or other carriage, not permitted to be measured or examined as aforesaid, to pass along any turnpike road; and if any collector or his deputy, or any other person appointed to collect the tolls, shall allow the same to pass before such measurement and examination shall be made (the same having been required), every collector, deputy, or other person shall for every offence forfeit and pay any sum not exceeding five pounds.

CARRIAGE
WHEELS.

Penalty on
obstructing
measure-
ment, not
exceeding 5*l*.

Penalty on
toll collector
allowing wag-
gons to pass
before mea-
surement, &c.
not exceed-
ing 5*l*.

XII. And for regulating the weights⁽ⁱ⁾ to be allowed to waggons, wains, carts, and other carriages, be it further enacted, That the weights hereafter next specified shall be allowed to every waggon, wain, cart, or other such carriage, (that is to say) to every waggon, wain, or other four-wheeled carriage, having the fellies of the wheels thereof of the breadth of nine inches at the bottom or soles thereof, together with the loading of such carriage, six ton ten hundred weight in summer, and six ton in winter; to every cart or other such

Regulating
the weights
of waggons,
&c.

(i) See further as to the weights and wheels of carriages, 4 G. 4, c. 95, ss. 20, 21; 2 & 3 W. 4, c. 124, ss. 1, 2, &c. See the Report of the Committee of the House of Lords, (Appendix III., post), recommending the abolition of weighing engines.

WEIGHTS OF
CARRIAGES.
—

two-wheeled carriage, having the fellies of the wheels thereof of the like breadth, together with the loading of such carriage, three ton ten hundred weight in summer, and three ton in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of the breadth of six inches and less than nine inches at the bottom or soles thereof, together with the loading of such carriage, four ton fifteen hundred weight in summer, and four ton five hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels of the breadth last mentioned at the bottom or soles thereof, together with the loading of such last-mentioned carriage, three tons in summer, and two tons fifteen hundred weight in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of the breadth of four inches and a half and less than six inches at the bottom or soles thereof, together with the loading of such carriage, four ton five hundred weight in summer, and three ton fifteen hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the breadth last mentioned at the bottom or soles thereof, together with the loading of such carriage, two ton twelve hundred weight in summer, and two ton seven hundred weight in winter; to every waggon, wain, or other such four-wheeled carriage, having the fellies of the wheels thereof of a less breadth than four inches and a half at the bottom or soles thereof, together with the loading of such carriage, three ton fifteen hundred weight in summer, and three ton five hundred weight in winter; to every cart or other such two-wheeled carriage, having the fellies of the wheels thereof of the breadth last mentioned, together with the loading of such carriage, one ton fifteen hundred weight in summer, and one ton ten hundred weight in winter^(k); and for the several purposes of this Act, it shall be deemed summer from the first day of May to the thirty-first day of October, both days inclusive, and winter

(k) See the Table of Weights, Schedule to 4 G. 4, c. 95, post.

from the first day of November to the thirtieth day of April, both days inclusive.

WEIGHTS OF
CARRIAGES.

XIII. And be it further enacted, That, to every caravan, or other four-wheeled carriage used for the conveyance of goods, and built and constructed with springs, shall be allowed the weights following, (that is to say) for every such carriage three tons and fifteen hundred weight in winter, and four tons five hundred weight in summer (*l*).

Additional weights for carriages built with springs.

XIV. Provided always, and be it further enacted, That, to each and every dray with two wheels of not less than four inches and a half in breadth, and drawn by not more than three horses, and used in London, or within the bills of mortality, there shall be allowed at all times of the year, together with the loading of such dray, the full weight of two tons sixteen hundred weight; any thing in this or any other Act of Parliament to the contrary notwithstanding.

Two-wheeled drays drawn by three horses allowed 2 tons 16 cwt.

XV. And be it further enacted, That it shall and may be lawful for all trustees and commissioners appointed by or under any Act or Acts of Parliament, for the making or maintaining of any turnpike road, or for any person or persons authorised by them, and they are hereby empowered and required, to receive, take, and demand, over and above the tolls payable by any Act or Acts of Parliament now in force or hereafter to be passed, the following sums of money as additional toll for every hundred weight, of one hundred and twelve pounds to the hundred, which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine over and above the weights hereinbefore allowed to each of them respectively, (that is to say): For the first and second hundred of such overweight, the sum of three-pence for each hundred; for every hundred of such overweight

Additional tolls for overweight (*m*).

(*l*) See further as to spring carriages, 4 G. 4, c. 95, s. 19; 4 & 5 W. 4, c. 81; and see Edgworth on Carriages.

(*m*) See 2 & 3 Vict. c. 46, giving power to reduce tolls for overweight.

WEIGHTS OF
CARRIAGES.

above two hundred and not exceeding five hundred, the sum of six-pence; for every hundred of such overweight above five hundred and not exceeding ten hundred, the sum of two shillings and sixpence; and for every hundred of such overweight exceeding ten hundred, the sum of five shillings(*n*); which said additional sums or tolls hereby granted and made payable at any weighing engine, shall and may be levied and recovered in any of the cases aforesaid, in such manner as any other toll or duty payable on the road on which any such weighing engine shall be erected, is or shall be by law to be levied and recovered, and the monies arising therefrom shall be applied to the repairs of the turnpike road on which the same shall be recovered(*o*).

Regulations
as to weight
not to extend
to manure,
&c.

XVI. Provided always, and be it further enacted, That the regulations of weight hereinbefore mentioned and provided shall not extend or be deemed or construed to extend to any waggons, carts, or other carriages carrying only manure(*p*) or lime for the improvement of land, or any hay, straw, fodder, or corn unthrashed, except hay, straw, fodder, or corn carried for sale; nor to any waggons, carts, or other carriages, carrying only one tree or one log of timber, or one block of stone, or one cable or rope; nor shall the said regulations of weight extend to any chaise marine, coach, berlin, barouche, sociable, chariot, calash, hearse, break, gig, chaise, or taxed cart(*q*).

(*n*) Under the 12 G. 3, c. 82, it was held that the additional toll to be paid by waggons for overweight, must be according to the progressive proportions named in the Act, and not a gross charge at the highest additional toll incurred upon the gross overweight: *Chamberlain v. Longhurst*, Cowp. 365.

(*o*) By 4 G. 4, c. 95, s. 19, the trustees are prohibited from entering into composition for overweight; but by s. 20 of that Act, a power is given to reduce the tolls for overweight, within ten miles of London. See also 2 & 3 Vict. c. 46, post.

(*p*) See *Chambers v. Eaves*, 2 Camp. 393.

(*q*) See further as to exemptions from toll for overweight, s. 35, post, p. 30; 4 G. 4, c. 95, ss. 17, 19, 21; 2 & 3 W. 4, c. 124, s. 2; 2 & 3 Vict. c. 46.

XVII. And whereas many persons may at the time of passing this Act be farmers or contractors for the tolls arising or payable on turnpike roads, and for tolls and penalties for overweight, and whose contracts will not expire until after the first day of January, one thousand eight hundred and twenty-three; for remedy whereof, and for protection of such lessees or contractors, be it further enacted, That, in case any lessee or lessees, farmer or farmers, contractor or contractors for any toll or tolls and penalties for overweight, payable to any trustees or commissioners appointed by virtue of any Act of Parliament for making, repairing, or amending turnpike roads, whose contract will not expire until after the first day of January, one thousand eight hundred and twenty-three, shall by reason of this Act be desirous of being discharged from his, her, or their contract or contracts, so far as regards such tolls or penalties for overweight, and of such his, her, or their desire shall, on or before the first day of September, one thousand eight hundred and twenty-two, give notice in writing to the treasurer or clerk of any such trustees, then and in every such case all such farmers, lessees, or contractors shall, from and after the said first day of January, one thousand eight hundred and twenty-three, be released and discharged from their respective contracts, so far as the same relate to such tolls or penalties for overweight; and all and every such contracts shall from thenceforth cease and be null and void as to the residue of the term or time then to come and unexpired therein, so far as such contracts relate to such tolls or penalties for overweight; any thing in such leases or agreements to the contrary notwithstanding.

WEIGHTS OF CARRIAGES.

Contractors of tolls may be released from their contracts, so far as regards tolls or penalties for overweight, on giving notice in writing to the treasurer or clerk of the trustees by Sept. 1, 1822.

XVIII. Provided also, and be it enacted, That, in case any such lessee or lessees, farmer or farmers, contractor or contractors, shall give such notice of determining his, her, or their contract as hereinbefore mentioned, then and in every such case it shall be lawful for such trustees or commissioners, if they think fit, to make any new contract or contracts with such lessee or lessees, farmer or farmers, contractor or contractors, or to make any compensation to him, her, or them, in respect of such tolls or penalties for overweight, or to cause the said tolls or penalties for overweight to be relet on a day and at a place to be by them appointed, of which one month's notice at least shall be given, and thereupon to proceed to relet the same, and to relet the same for the best price they may then be enabled to obtain for the same, without being compelled to put up the said tolls or penalties for overweight at the sum at which they were last let, or to have any other meeting for the letting thereof; any law or custom to the contrary notwithstanding.

New contracts may be made with contractors.

One month's notice thereof to be given.

XIX. And by it enacted, That it shall not be lawful for the trustees or commissioners of any turnpike road, their lessee or lessees, collector or collectors, or other officers, to make any composition for any additional tolls or duties for or in respect of the overweight, or in any other manner as to the weight which any waggon, wain, cart, or carriage shall carry or weigh, any law to the

Trustees not to make composition for overweight.

[Repealed by 4 G. 4, c. 96, s. 12.]

**WEIGHTS OF
CARRIAGES.**

contrary thereof notwithstanding; but every contract and agreement for such composition for overweight shall be null and void to all intents and purposes whatsoever; and every lessee, collector, or other officer entering into or agreeing to any such composition, and every person or persons with whom any such composition or agreement shall be made or entered into, shall for every such composition or agreement, and for every abatement of toll for overweight in consequence thereof, respectively forfeit and pay the sum of fifty pounds to any person or persons suing for the same.

Penalty on
unloading
goods, &c.,
to evade toll,
or obstruct-
ing the
weighing, 5*l*.
on the owner
of the wag-
gon, &c.,
and not ex-
ceeding 40*s*.
on the driver.

XX. And be it further enacted, That, if any person or persons shall unload, or cause to be unladen, any goods, wares, or merchandise, from any cart, waggon, or other carriage, at or before the same shall come to any turnpike gate or weighing engine erected by virtue or in pursuance of this or any other Act made for the repair or preservation of any turnpike road, or shall load or lay upon such carriage, after the same shall have passed any such turnpike or weighing engine, any goods, wares, or merchandise, taken or unladen from any horse, cart, or other carriages belonging to or hired or borrowed by the same waggoner or carrier, in order to avoid the payment of the said respective duties payable for overweight; or if any person shall so unload, in order to carry considerable quantities of goods through any turnpike gate or by any weighing engine in one and the same day, and thereby pay less toll at such turnpike gate or weighing engine than would have been paid if such goods, wares, or merchandise had not been so unladen; or if any driver of any waggon or cart shall not wait a reasonable time whilst any other carriage shall be weighed, which shall have come to the weighing engine before the carriage of which he shall be the driver; or if the driver of any waggon or cart shall refuse or delay to remove or drive any such waggon or cart from the weighing machine, in order, by such neglect or refusal, to impede or delay the weighing of any other waggon or cart, or shall turn or drive out of any road in order to avoid or evade the weighing of any waggon or cart; each and every person so offending in any of the cases aforesaid, and being thereof lawfully convicted before one or more justice or justices of the peace for the limit where the offence shall be committed, upon the

oath of one or more credible witness or witnesses, shall forfeit and pay the sum of five pounds, to be levied upon the goods and chattels of the owner of such cart, waggon, or other carriage; and each and every driver, not being the owner of such waggon or carriage, so offending, and being thereof convicted as aforesaid, shall forfeit and pay any sum not exceeding forty shillings, and in case of non-payment thereof shall be committed to the house of correction for any time not exceeding two calendar months(*r*).

WEIGHTS OF
CARRIAGES.

XXI. And be it further enacted, That it shall and may be lawful for the said trustees or commissioners, at any of their respective meetings, if they think proper, to order and cause to be built and erected, at any of the turnpikes or toll-gates on the roads under their care and management, or at such distance therefrom as they shall think expedient, one or more crane or cranes, machines, or engines(*s*), with a suitable house or other building thereto, proper for the weighing of waggons or carriages conveying any goods or merchandise whatsoever, and by notice on a board for that purpose, to be put up at every such weighing machine, to order and direct all and every such waggons or carriages which shall come within one hundred yards of any crane, machine, or engine, to be weighed, together with the loading thereof.

Power given
for erecting
weighing
machines.

XXII. And be it further enacted, That the keeper of every toll-gate or bar where any weighing engine shall be erected, or any other person appointed or to be appointed by the trustees or commissioners, or by their lessee or lessees, to the care of such weighing engine, shall and is hereby required to weigh all such waggons, carts, and other carriages liable to be weighed, which shall pass loaded through such gates or bars respectively, and which he shall believe to carry greater weights

Where
weighing
engines are
erected, toll
keepers to
weigh wag-
gons, &c., of
greater
weight than
allowed, and
not suffer
them to pass
without pay-
ing the addi-
tional toll, on
penalty of 5*l*.

(*r*) See further as to the evasion of tolls, sect. 41, post, p. 33, and 9 G. 4, c. 77, s. 17.

(*s*) See Form of Order, Schedule No. 1; and see note (*i*) on sect. 12, ante, p. 11.

**WEIGHING
ENGINES, &c.**

Penalty on
refusing or
resisting the
weighing,
not exceed-
ing 5*l*.

Trustees, &c.,
may cause
waggon, &c.,
to return to
be weighed,
in case of
neglect of
duty of the
collector.

Surveyors to
make conven-
ient places
for turning
carriages
where weigh-
ing engines
are erected.

than are allowed to pass without paying the said additional toll; and if any collector or person so appointed shall permit any such waggon, cart, or other carriage to pass by or through any such toll-gate with greater weights than are hereby allowed, without weighing the same and receiving such additional tolls as aforesaid, he shall, for every such offence, forfeit the sum of five pounds; and if the owner or driver of any waggon, cart, or other carriage, shall refuse to allow the same to be weighed, or shall resist any gate keeper or toll collector in weighing the same, every owner or driver so offending shall forfeit and pay any sum not exceeding five pounds.

XXIII And in order to detect the said collector or receiver in any fraudulent contrivance or neglect of duty in the matters aforesaid, be it further enacted, That it shall and may be lawful for any trustee or commissioner, or surveyor of every turnpike road, if he shall suspect any such connivance or neglect as aforesaid, to cause any waggon, cart, or other carriage which shall have passed through any toll-gate where any weighing engine shall be erected, and shall not have passed above three hundred yards beyond such toll-gate, to return to such weighing engine, and be there weighed with the loading which passed through such toll-gate, in the presence of such trustee or commissioner or surveyor, upon requiring the driver thereof to drive such carriage back to such weighing engine, and upon paying or tendering to him the sum of one shilling for so doing(*t*), which sum of one shilling shall be returned to the person paying the same, if upon weighing such carriage and the loading thereof it shall be found above the weight hereby allowed.

XXIV. And for the better enforcing the authority of this Act, be it further enacted, That the surveyors of every turnpike road shall and they are hereby authorised and required to make convenient places for turn-

(*t*) Penalty on driver refusing to return, imposed in the next section.

ing such carriages upon every such turnpike road where any weighing engine shall be erected, within three hundred yards of such toll-gate, on each side thereof, if the ground will admit of the same; and if the driver of any such carriage, being so requested to return with his carriage to such weighing engine, shall neglect or refuse so to do, he shall forfeit any sum not exceeding five pounds; and it shall and may be lawful for any peace officer or other person or persons being then present, upon such neglect or refusal, to drive and take such carriage back to such weighing engine, in order to be weighed as aforesaid.

**WEIGHING
ENGINES, &c.**

Drivers refusing to return, to forfeit not exceeding 5*l*.

XXV. Provided also, and be it further enacted, That, when two or more turnpike roads meet at or near the same place, it shall and may be lawful for the trustees or commissioners of such turnpike roads respectively, at a meeting to be held for that purpose, to fix upon some convenient place to erect a weighing engine upon, which will accommodate all such turnpike roads, and by agreement (*u*) amongst themselves at such meeting to proportion the expenses which may attend the making, erecting, maintaining, and keeping in repair such weighing engine, and likewise the money arising from forfeitures to be incurred for overweight at such weighing machine, amongst all such turnpike roads, in such manner as to them shall appear just and reasonable.

Where turnpike roads on different trusts meet, trustees to fix on some place for erecting a weighing engine, and proportion the expense, &c.

XXVI. And be it further enacted, That, in every case in which under any Act or Acts of Parliament relating to any turnpike road, there is an exemption from toll (*v*) or duty in respect of any horse, mule, ass, ox, waggon, cart, or other carriage, drawing or carrying any dung, mould, marl, or compost, of any nature or kind soever (*w*), for improving or manuring the land, or

Exemptions from toll on manure, road materials, fodder, &c., contained in any Act, to be in force, although brought from an adjoining parish.

(*u*) See Form of Agreement, Schedule, No. 3.

(*v*) See as to general exemptions from toll, s. 32, post, p. 24, and the Acts there referred to.

(*w*) See further as to the exemptions respecting manure, ss. 27, 32; 5 & 6 W. 4, c. 18, &c.

**EXEMPTIONS
FROM TOLL.**

hay, straw, or any other fodder for cattle (*w*) or materials for repairing any turnpike road or highway, such exemption shall be deemed to extend in respect of every such waggon, cart, or other carriage, and also in respect to the cattle drawing the same, going empty, or loaded only with implements necessary for more convenient carriage; or loading or unloading such lading, or returning empty, or with such implements as aforesaid, having been so laden, notwithstanding the said waggon, cart, or other carriage shall, for the purpose aforesaid, go to or return from any parish or place in which the said turnpike does not lie (*x*).

Tolls payable on waggons going empty for manure or road materials, &c., to be repaid when returning laden.

XXVII. Provided always, and be it further enacted, That, for the preventing of frauds on toll collectors by waggons, carts, or other carriages passing empty, or loaded only with implements necessary for the more convenient carriage of or for loading or unloading manure, or materials for the repair of any turnpike road or highway, through turnpike gates, under pretence of going for such manure or materials, the owner or driver of every such empty waggon, cart, or carriage, claiming the same exemptions or any of them, shall in all cases pay the toll in respect of such waggon, cart, or other carriage, before the same shall be permitted to pass through such turnpike gate; and the collector of such toll shall thereupon deliver to such owner or driver a ticket, to be marked "manure exemption" or "road materials" (as the case may be), with the name of the gate and the date when delivered, and the amount of the toll so paid; all which sum or sums so paid shall be repaid to the owner or driver of such waggon, cart, or other carriage, upon his or their returning with such waggon, cart, or other carriage so laden as aforesaid, and producing such ticket; and every collector of such toll refusing to give such ticket on receiving the toll, or refusing or neglecting to return the same toll upon the return of such waggon, cart, or other car-

Penalty for not returning such tolls, not exceeding 5*l*.

(*w*) See s. 32, post, p. 24.

(*x*) See *Rex v. Adams*, 6 M. & Sel. 52, post, n. (*b*), pp. 26, 27.

riage so laden, and re-delivery of the “manure exemption” or “road materials” ticket, as the case may be, shall for every such offence forfeit and pay to the owner of such waggon, cart, or other carriage a penalty of not more than five pounds, upon conviction thereof before one or more justice or justices of the peace for the county, riding, division, or place where such offence shall be committed, upon the oath of one or more credible witness or witnesses (y).

EXEMPTIONS
FROM TOLL.

XXVIII. And be it further enacted, That the owner or driver of any waggon, cart, or other carriage laden with manure for land, or materials for any turnpike road or highway, passing through any turnpike gate, or otherwise passing on, or across any turnpike road, shall not be liable to pay any toll, nor shall any toll be demanded for such carriage so laden, or the cattle drawing the same, by reason only of any basket or baskets, empty sack or sacks, or spade, shovel, or fork necessary for loading or unloading such manure or materials, being in or upon any such waggon, cart, or other carriage, in addition to such manure or materials, if the loading thereof is substantially manure for land, or materials for the repair of any turnpike road or highway as aforesaid; any thing in any Act contained to the contrary thereof notwithstanding (z).

Toll not to be taken on account of baskets, &c., being in waggons, &c., laden with manure, &c.

XXIX. And be it further enacted, That all horses travelling (a) for hire under the Post-Horse Duties Acts,

Post-horses having passed through

(y) See note on sect. 32, post, p. 25; and see *Harrison v. James*, 2 Chit. 547.

(z) See also 5 & 6 W. 4, c. 18, s. 1; and see *Chambers v. Eaves*, 2 Camp. 393.

(a) The exemption applies only to horses *travelling* and drawing carriages. As to the meaning of the phrase “used in travelling,” see 44 G. 3, c. 98, Schedule (B). It has been decided, that a hiring for the purpose of riding from London to Richmond and back, and also a hiring for fourteen days to go a journey, are hirings to *travel*; but that a hiring to go many miles into the country for pleasure, no place being fixed, or a hiring to take an airing, or to go ten or twelve miles into the country and return in

Post-horses

EXEMPTIONS
FROM TOLL.

any gate may
return toll-
free before
nine in the
morning of
the following
day.

having passed through any turnpike gate erected or to be erected on any turnpike road, drawing any carriage in respect of which any toll shall have been paid, on returning through the turnpike gate at which the toll shall have been paid, and the other gates (if any) cleared by such payment, either without such carriage, or drawing such carriage, the same being empty, and without a ticket denoting a fresh hiring, shall be permitted to repass toll-free, although such horses or carriage shall not have passed through such turnpike gate on the same day; provided that such horses so travelling shall return before nine of the clock of the morning succeeding the day on which they first passed the turnpike gate at which the toll shall have been paid (b).

the evening, are not any of them a hiring to travel: *Ramsden v. Gibbs*, 1 B. & C. 319. The exemption is limited to horses hired under the Post-Horse Duties Acts; and it has been held, that a duty is payable under those Acts where a horse is hired to go a certain stage and back again within the day: *Hanley v. Cubberley*, 15 East, 255; 3 *Burn's Justice*, 719. See also *Welsford v. Todd*, 8 East, 580; *R. v. Swift*, Id. 584, note (a); *Reg. v. Ruscoe*, 8 A. & E. 386.

Carriages
passing more
than once a
day.

(b) In the local Act imposing the toll, there is usually a provision that certain horses or carriages shall be chargeable with only one toll on the same day; and it may be proper in this place to refer to the various cases which have been decided upon enactments of this nature. These decisions have, of course, depended upon the manner in which the provisions in the local Act imposing the toll and limiting the payment have been worded; sometimes the local Act imposes the toll on the horses drawing, sometimes on the carriage, sometimes on both; and the exemption from a second toll is in some Acts allowed on the same horses returning, in others on the same carriage returning, in others on the return of the same horses and carriage. In one of the cases referred to, *Jackson v. Curwen*, 5 B. & C. 33, 7 D. & R. 838, Mr. Justice Bayley observed, that "it is an established rule, that, where the toll is imposed upon carriages drawn by horses, and there is a clause of exemption for all persons repassing on the same day with the same horses and carriage, or with the same horses or carriage, and the same carriage returns the

XXX. And be it further enacted, That, where any horse or horses shall pass through any turnpike gate on any road, not drawing any carriage, and a toll shall be paid on such horse or horses at such turnpike gate, and the same horse or horses shall return drawing any carriage on the same day, or within eight hours after their first passing through such gate, the toll paid on such horse or horses on their originally passing shall be deducted from the toll payable on the same when drawing the carriage to which they shall be attached on their return, so that no higher toll shall in the whole be taken than if such horse or horses had in the first place passed through such turnpike gate drawing the said carriage.

EXEMPTIONS
FROM TOLL.

Horses having passed through a gate, and returning drawing a carriage, the toll paid on the horses to be deducted.

XXXI. And whereas coaches, chariots, chaises, chairs, carts, and other carriages, sometimes pass

Tolls to be paid upon carriages

same day drawn by different horses, no second toll is payable. And where the toll is imposed upon the horses drawing the carriage, with a similar clause of exemption, no second toll is payable, if the same horses return with a different carriage." And see *Williams v. Sanger*, 10 East, 66; *Waterhouse v. Keen*, 4 B. & O. 200; *Chambers v. Williams*, 7 D. & R. 842, 5 B. & C. 36, note; *Gray v. Shilling*, 4 Moore, 371, 2 B. & B. 30; *Fearnley v. Morley*, 5 B. & C. 25; *Norris v. Poate*, 3 Bing. 41; *Niblett v. Pottow*, 1 Bing. N. C. 81. This rule appears not to have been very strictly adhered to in *Loaring v. Stone*, 2 B. & C. 515, 3 D. & R. 797; from which it may be collected, that, although the toll be imposed only upon the carriage, or only upon the horses which drew it, yet the clause for exemption upon repassing may be so worded as to require both the carriage and the horses to be the same as before, in order to come within its operation. And see *Hopkins v. Thorogood*, 2 B. & Ad. 916. As it is impossible to refer to all the circumstances upon which these important decisions turned in the short compass of a note, they will be set out at greater length in the Appendix. And see *Fenton v. Swallow*, 1 Ad. & E. 723; *Leeds and Liverpool Canal Company v. Hustler*, 1 B. & C. 424. As to what shall be considered a "day" under the General Turnpike Act, see 9 G. 4, c. 77, s. 16; and as to the calculation of double toll, see 2 & 3 W. 4, c. 126, s. 1.

EXEMPTIONS
FROM TOLL.

affixed to
others.

through turnpike gates affixed, tied, or secured to waggons or carts, and horses are sometimes sent under the charge of the drivers of such waggons and carts, and are fastened thereto; and it is expedient to determine what tolls such coaches, chariots, chaises, chairs, carts, and other carriages and horses ought to pay on passing through such gates; be it therefore enacted, That where, by any Act for repairing any turnpike road, no toll is directed to be taken for or in respect of any coach, chariot, chaise, or any other carriage whatsoever with four wheels, passing through any turnpike gate on such road, affixed, tied, or secured to any waggon or cart, the same toll, and no more, shall and may be demanded (*d*) and taken for and in respect of such coach, chariot, chaise, or other carriage, as if the same had passed through drawn by two horses; and where by any Act for repairing any turnpike road no toll is directed to be taken for or in respect of any chair, cart, or other carriage whatsoever, with two wheels only, passing through any turnpike gate on such road, so affixed, tied, or secured to any waggon or cart as aforesaid, the same toll, and no more, shall and may be demanded and taken for and in respect of such chair, cart, or other carriage with two wheels only, as if the same had passed through drawn by one horse only; and where any horse shall be fastened to but not used in drawing any waggon, cart, or other carriage, such horse shall not be liable to a higher toll than a single horse; provided that if any coach, chariot, chaise, chair, cart, or other carriage so affixed, tied, or secured to any waggon or cart, shall have any goods conveyed therein other than the harness thereto belonging, and such articles of package as may be necessary for the protection of such carriages, the same shall be liable to double the toll hereby imposed.

Horses and
carriages at-
tending his

XXXII. And be it further enacted, That no toll shall be demanded (*d*) or taken by virtue of this or any

(*d*) As to what amounts to a demand of toll, see *Maurice v. Marsden*, 19 L.J., C.P., 152; *Stamp v. Sweetland*, 8 Q.B. 13, post.

other Act or Acts of Parliament, on any turnpike road (e), for any horses or carriages attending (f) his Majesty or any of the royal family, or returning therefrom; or of or from any person or persons for any horse or horses or other beast or cattle, or for any waggon, wain, cart, or other carriage (g) employed in carrying or conveying, or going empty to fetch, carry, or convey, or returning empty from carrying or conveying, having been employed only in carrying or conveying, on the same day, any stones, bricks, timber, wood, gravel, or other materials for making or repairing any turnpike road or public highway, or for building, rebuilding, or

EXEMPTIONS
FROM TOLL.

—
Majesty, &c.;
or conveying
materials
for roads and
bridges;

(e) The general exemptions from toll are much more numerous than those of the old General Turnpike Acts, but are nearly the same as have been contained in most of the local Acts lately passed. The local Act, in fact, usually regulates the exemptions; and by 4 G. 4, c. 95, s. 26, it is provided, that the general laws shall not repeal any exemptions granted by the local Acts. All questions respecting exemptions from toll depend upon the manner in which the particular Act of Parliament on which the case arises is worded: Per *Bayley, J., Loaring v. Stone*, 2 B. & C. 518, 3 D. & R. 797; and exemptions, being for the benefit of the public, are to be beneficially construed: *Hickinbotham v. Perkins*, 3 Moore, 185, 8 Taunt. 795. But in a case where the section imposing the toll was plain, and another section giving an exemption from toll was ambiguous or contradictory, the Court decided for the imposition of the toll: *Hopkins v. Thorogood*, 2 B. & Ad. 918. It will be observed, that vehicles having wheels of less than a certain breadth are (with certain exceptions) excluded from the benefit of the exemptions granted by any statute; see 4 G. 4, c. 95, ss. 10, 17, 26; and that the exemptions from toll which are allowed by any Act do not extend to the additional tolls imposed for overweight, unless they are specially exempted from such toll: 4 G. 4, c. 95, s. 17. As to persons fraudulently claiming the benefit of any exemption to which they are not entitled, see 3 G. 4, c. 126, s. 36; 9 G. 4, c. 77, s. 17.

General ex-
emptions.

(f) By 4 G. 4, c. 95, s. 24, this part of the enactment is extended to "or going to attend or returning from having attended."

(g) By 4 G. 4, c. 95, s. 10, the wheels must, to entitle a person to the exemption, be four and a half inches wide.

EXEMPTIONS FROM TOLL.	repairing any present or any future bridge or bridges(<i>h</i>)
or surveyor of turnpike road when officially en- gaged;	on any such road or public highway; or of or from the surveyor of any turnpike road when engaged in execut- ing or proceeding to execute, within the limits of his own <i>or any adjoining</i> trust(<i>i</i>) the powers of this or any other Act or Acts of Parliament for repairing, main- taining, or relating to any turnpike road; or for any
or manure (except lime);	horse, beast, or other cattle or carriage employed in car- rying or conveying, having been employed only in car- rying or conveying on the same day, any dung, soil (<i>j</i>), compost, or manure (save and except lime (<i>j</i>)) for im- proving lands, or any ploughs, harrows, or implements of husbandry (<i>k</i>) (unless laden also with some other thing not hereby exempted from toll); or any hay, straw, fodder for cattle, and corn in the straw, which has grown or arisen on land or ground in the occupa- tion of the owner of any such hay, straw, fodder, or corn in the straw, potatoes, or other agricultural produce, and which has not been bought, sold, or disposed of, nor is going to be sold or disposed of(<i>l</i>); or for any
or agricultu- ral produce not sold or for sale;	
or horses employed in	

(*h*) This exemption as to bridges was made necessary by the decision in *Osmond v. Widdicombe*, 2 B. & Ald. 49; and see 1 & 2 W. 4, c. 25, s. 2, extending this exemption to carriages, &c. engaged in statute labour.

(*i*) Repealed as to the words in italics, by 4 G. 4, c. 95, s. 25.

(*j*) See 4 G. 4, c. 16; 4 G. 4, c. 95, s. 23; 5 & 6 W. 4, c. 18; 3 & 4 V. c. 51; 13 & 14 V. c. 79, s. 3; and see *Rex v. Gough*, 2 Chit. 655; *Anon. Lofft*, 324.

(*k*) This includes threshing machines: 14 & 15 V. c. 38, s. 4.

Husbandry,
&c.

(*l*) These exemptions in favour of agriculture are in particular to be beneficially construed: *Hickinbotham v. Perkins*, 3 Moore, 185, 8 Taunt. 795. Thus, in a case where a local Act had exempted waggons carrying manure from the penalties for overweight, provided they should be employed in carrying "only" manure, it was held that two empty bottles tied to a waggon, in addition to a load of manure, did not make the waggon liable to toll for overweight: *Chambers v. Eaves*, 2 Camp. 393. And where a local Act exempted from toll carriages with manure for lands in the parishes where the roads were, a cart going with manure for lands

horses or other beasts employed in husbandry going to or returning from plough or harrow, or to or from pasture or watering place(*m*), or going to be or returning from being shod or farried, such horses or other beasts not going or returning on those occasions more than two miles on the turnpike road on which the exemption shall be claimed; or of or from any person or persons going to or returning from his, her, or their proper parochial church or chapel; or of or from any other person or persons going to or returning from his, her, or their usual place of religious worship tolerated by law, on Sundays, or on any day on which divine service is by authority ordered to be celebrated(*n*); or of or from any inhabitant of any parish, township, or place, going

EXEMPTIONS FROM TOLL.
—
husbandry, &c.;
or going to or returning from church;
or attending funerals;

in a parish not within the trust was held still exempted under the above general clause: *Rex v. Adams*, 6 M. & Sel. 52. But where, in another local turnpike Act, "cattle going to or returning from pasture," and "horses attending cattle returning from pasture," were exempted, it was held that a horse ridden by the owner of the cattle at pasture, in order to fetch them from pasture, did not come within either of the exemptions: *Harrison v. Brough*, 6 T. R. 706. See 1 & 2 W. 4, c. 25, s. 1.

(*m*) *Harrison v. Brough*, *supra*.

(*n*) See the next section, which limits this exemption to places at a distance from London. Previously to the passing of this Act, where a local turnpike Act exempted persons from toll in going to and returning from their proper parochial church, chapel, or other place of religious worship on Sunday, it was held, that the word *parochial* extended over the whole clause, and therefore that a dissenter was not within the exemption in going to and returning from his proper place of religious worship, situate out of the parish where he resides: *Lewis v. Hammond*, 2 B. & Ald. 206. It will be observed, however, that the expression here is very different from that on which the question turned in that case; and the construction usually adopted in reference to the present exemption is, that a dissenter is exempt from toll in going to his usual place of worship, although it be out of the parish where he resides; but that a churchman is only exempt when going to his *proper* parochial church or chapel.

Dissenters going to or returning from places of worship.

EXEMPTIONS
FROM TOLL.

or of ministers attending their duty;

or conveying vagrants;

or conveying the mails;

horses of officers or soldiers on duty;

or conveying baggage, or any sick, ordnance, or public stores;

horses and carriages used by corps of yeomanry, &c.;

to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or hamlet in which any turnpike road shall lie; or from any rector, vicar, or curate going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish; or for horses, carts, or waggons employed only in carrying or conveying any vagrant sent by a legal pass, or any prisoner sent by any legal warrant, or returning empty after having been so employed; or for any horses or carriages, of whatever description, employed or to be employed in conveying the mails of letters and expresses under the authority of his Majesty's postmaster-general (o), either when employed in conveying, fetching, or guarding such mails or expresses, or in returning back from conveying or guarding the same; or for the horse or horses of any officers or soldiers on their march or on duty, or for any horse or horses or other beast, or any cart, carriage, or waggon employed in carrying or conveying, or returning empty from carrying or conveying, having been employed only in carrying or conveying the arms or baggage of any such officers or soldiers, or employed in carrying or conveying, or returning empty from having been employed only in carrying or conveying any sick, wounded, or disabled officers or soldiers; or for any waggon, wain, cart, or other carriage whatsoever, or the horse or horses or other cattle drawing the same, employed in conveying any ordnance, or barrack, or commissariat, or other public stores of or belonging to his Majesty, or for the use of his Majesty's forces, or returning empty from having been so employed; or for any carriage conveying volunteer infantry, or for any horse furnished by or for any person belonging to any corps of yeomanry or volunteer cavalry or infantry, and rode by him in going to or returning from any place appointed for and on the days of exercise, inspection, or review, or on other pub-

(o) See *The Master, &c. of the Trinity House v. Clarke*, 4 M. & Sel. 288; *Rex v. Jones*, 8 East, 539; *Vallejo v. Wheeler*, Cowp. 143; *Hamilton v. Stowe*, 5 B. & Ad. 649.

lic duty, provided that such person shall be dressed in the uniform of his corps, and shall have his arms, furniture, and accoutrements according to the regulations of such corps at the time of claiming the exemption (*p*); or for any horses or carriages carrying or conveying any person or persons to or from any election or elections of a knight or knights of the shire to serve in parliament for the county or counties in which such turnpike road shall be situated; or for any horses or carriages which shall only cross any turnpike road, *or* (*q*) shall not pass above one hundred yards thereon.

EXEMPTIONS
FROM TOLL.

or conveying
persons to or
from county
elections;

or crossing
roads, &c.:—
exempt from
tolls.

XXXIII. Provided always, and be it enacted, That so much of this Act as directs that no toll shall be demanded or taken from any person or persons going to or returning from his, her, or their proper parochial church or chapel, or of or from any other person or persons going to or returning from his, her, or their usual place of religious worship tolerated by law, on Sundays, or on any day on which divine service is ordered by authority to be celebrated, shall not extend or be construed to extend so as to exempt any such

Exemption
from toll on
Sundays, &c.
for persons
going to and
returning
from church,
not to extend
to any turn-
pike within
the distance
of five miles
of London,
&c.

(*p*) See also the Mutiny and Marine Mutiny Acts, 16 & 17 Vict. c. 9, s. 78, and c. 10, s. 76, post; and, as to policemen and constables, 2 & 3 Vict. c. 47, s. 10; 3 & 4 Vict. c. 88, s. 1; 14 & 15 Vict. c. 38, s. 4.

(*q*) Instead of the word '*or*,' the 13 G. 3, c. 78, had '*and*.' Under that Act it was decided, that the exemption could be claimed in every case where 100 yards were travelled on the road, whether the carriage crossed it or not: *Major v. Oxenham*, 5 Taunt. 340. But in another case a contrary decision was given. *Philips v. Harper*, 2 Chit. 412. Since the present Act was passed, the toll has been held to attach, although a part of the 100 yards travelled upon consists of roads not repairable by or out of the funds of the trustees, so as the whole 100 yards be part of the turnpike road: *Bussey v. Storey*, 4 B. & Ad. 98; *Pope v. Langworthy*, 5 B. & Ad. 464; *Phipson v. Harvett*, 1 C. M. & R. 473. See 4 & 5 Vict. c. 33, declaring that this exemption extends to all beasts and cattle other than horses, and to all vehicles or carriages of any kind whatsoever.

**EXEMPTIONS
FROM TOLL.**

person or persons from the payment of toll at any turnpike gate or gates situate within the distance of five miles of the Royal Exchange in the city of London, or within the distance of five miles of Westminster Hall in the city and liberties of Westminster.

Not to exempt manure, if liable by local Act.
[*Repealed* by 4 G. 4, c. 95, s. 22.]

XXXIV. Provided also, and be it enacted, That nothing herein contained shall extend or be construed to extend, so as to exempt any waggon, cart, or other carriage laden with dung, soil, compost, or manure for manuring land, or any horse or other beast drawing the same, from any toll imposed in respect thereof by virtue of any local Act or Acts now passed, whereby such toll has been imposed for the maintenance of the roads therein respectively mentioned.

Exempting carriages conveying king's stores, &c., from penalties for overweight.

XXXV. And be it further enacted, That no person owning or driving, or causing to be driven, any waggon, wain, cart, or other carriage provided for the service of his Majesty's forces, or conveying any ordnance, or barrack, or commissariat, or other public stores of or belonging to his Majesty, or for the use of his Majesty's forces, shall be subject to any additional toll, penalty, or forfeiture for overweight; nor shall any such waggon, wain, cart, or other carriage, or the horse or horses drawing the same, while so employed, be stopped or detained by reason of any weight in any such waggon, wain, cart, or other carriage, or of being drawn by any number of horses or oxen; but it shall be lawful for the owner or driver of any such waggon, wain, cart, or other carriage, to put any number of horses or oxen to such waggon, wain, cart, or other carriage; any thing in any Act or Acts of Parliament relating to highways or turnpike roads, or in this Act contained to the contrary notwithstanding.

Penalty not exceeding 5*l.* on fraudulently taking the benefit of exemption.

XXXVI. And be it further enacted, That if any person or persons shall, by any fraudulent or collusive means whatsoever, claim or take the benefit of any exemption from toll or from overweight, or for using any additional horse or horses, or of any other exemption or exemptions whatsoever in this Act contained, every such person shall for every such offence forfeit and pay any sum not exceeding five pounds; and in

all cases the proof of exemption shall be upon the person claiming the same (r). TOLL TABLES,
&c.

XXXVII. And be it further enacted, That, on or before the first day of January, one thousand eight hundred and twenty-three, the trustees and commissioners of every turnpike road shall and they are hereby required to put up or cause to be put up, and afterwards to be continued, at every toll-gate within their respective districts, a table painted in distinct and legible black letters on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing the several tolls, and the different sorts of carriages for which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll-gate or bar where such table of tolls shall be affixed; and the said trustees or commissioners shall also provide tickets denoting the payment of toll, and on such several tickets shall be named and specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered gratis to the person paying the toll; and on the production of such ticket at any gate or gates therein mentioned as being cleared as aforesaid by the payment of the toll at the gate where such ticket was delivered, the person producing the same shall pass through the gate or gates therein mentioned, without paying any further or additional toll (s). Trustees to
put up a ta-
ble of the
tolls,

and provide
tickets.

XXXVIII. And be it further enacted, That, in all carriages wherein oxen or neat cattle shall be used, two oxen or neat cattle shall be considered as one horse, for all the purposes mentioned in this Act, or any particular turnpike Act with respect to tolls or other things. Two oxen to
be consider-
ed as one
horse.

XXXIX. And be it further enacted, That, if any person subject or liable to the payment of any of the toll or tolls under and by virtue of this or any other Act of Parliament for making, repairing, or maintaining any turnpike road, shall, after demand (t) thereof made, For recovery
of tolls.

(r) Extended to exemptions mentioned in local Acts, by 9 G. 4, c. 77. See Form of Conviction, Appendix, No. 63. And see *Reg. v. Irving*, 12 Q. B. 429.

(s) Re-enacted by 4 G. 4, c. 95, s. 28.

(t) See *Maurice v. Marsden*, 19 L. J., C. P., 152.

RECOVERY OF TOLLS.
Collector may distrain.

neglect or refuse to pay the same, or any part or parts thereof, it shall be lawful for the person or persons authorised or appointed to collect such tolls, by himself or themselves, or taking such assistance as he or they shall think necessary, to seize and distrain any horse, beast, cattle, carriage, or other thing, upon or in respect of which any such toll is imposed, together with their respective bridles, saddles, gears, harness, or accoutrements (except the bridle or reins of any horse or other beast separate from the horse or beast), or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed, or any of the goods or chattels of the person or persons so neglecting or refusing to pay; and if the toll, or any part thereof, so neglected or refused to be paid, and the reasonable charges of such seizure and distress, shall not be paid within the space of four' days next after such seizure and distress made, the person or persons so seizing and distraining may sell the horse, beast, cattle, carriages, or things so seized and distrained, or a sufficient part thereof, returning the overplus of the money to arise by such sale (if any) and what shall remain unsold, upon demand, to the owner thereof, after such tolls, and the reasonable charges occasioned by such seizure, distress, and sale, shall be deducted (*u*).

If toll and charges be not paid in four days, distress may be sold.

Tolls recoverable by action.

(*u*) A collector or renter of tolls, informally appointed, may yet recover the amount of the tolls for which he had given credit to the defendant on passing through the gate; no objection being made to the plaintiff's title by the trustees or creditors of the turnpike. And the plaintiff having sent to the defendant an account of the tolls due, and shortly after received from him a letter inclosing 5*l.*, in which payment of the remainder was promised the following week, this was held to be evidence of an account stated between the parties, and a recognition of the plaintiff's title to be accounted with for the tolls: *Peacock v. Harris*, 10 East, 104; see *Maurice v. Marsden*, 19 L. J., C. P., 152. Credit may therefore be given for tolls, when there is no collusion. And see 9 G. 4, c. 77, s. 16, giving the collector a general power of collecting tolls, and vesting the tolls when collected in the trustees.

XL. And be it further enacted, That, if any dispute shall happen or arise about the amount of the tolls due, or the charges of making, keeping, or selling any distress made for non-payment of any tolls, it shall be lawful for the collector, or the person distraining, to retain such distress, or the money arising from the sale thereof (as the case may be), until the amount of the tolls due, and the charges of the making, keeping, and selling the distress be ascertained by some justice of the peace for the county, division, or place wherein the turnpike or toll-gate at which the toll in dispute shall be payable shall or may be situate, who, upon application made to him for that purpose, shall examine the matter on the oath of the parties or other witness or witnesses (which oath such justice is hereby authorised and empowered to administer), and shall determine the amount of the tolls due, and shall award such costs and charges to either party as to the said justice shall appear right and proper; all which costs and charges shall and may be levied and recovered, in case of non-payment thereof forthwith, by distress and sale of the goods and chattels of the person or persons so awarded or directed to pay the same, by warrant under the hand and seal of such justice, rendering the overplus (if any) upon demand, after deducting the costs and charges of making such distress and sale, to the person or persons whose goods and chattels shall have been so distrained and sold.

RECOVERY OF
TOLLS.

Any justice
may settle
disputes con-
cerning tolls.

XLI. And be it further enacted, That, if any person shall, with any horse, cattle, beast, or carriage, go off or pass from any turnpike road, through or over any land or ground near or adjoining thereto (not being a public highway, and such person not being the owner or occupier, or servant or one of the family of the owner or occupier of such land or ground), with intent to evade the payment of the tolls granted by any Act of Parliament; or if any owner or occupier of any such land or ground shall knowingly or willingly permit or suffer any person (except as aforesaid), with any horse, cattle, beast, or carriage whatsoever, to go or pass through or

Penalty not
exceeding
5*l.* for evad-
ing tolls.

EVADING
TOLLS.

over such land or ground with intent to evade any such tolls; or if any person shall give or receive from any person other than the collectors of the tolls, or forge, counterfeit, or alter any note or ticket directed to be given, with intent to evade the payment of the tolls, or any part thereof; or if any person shall fraudulently or forcibly pass through any such toll-gate (*x*) with any horse, cattle, beast, or carriage (*y*); or shall leave upon the said road any horse, cattle, beast, or carriage whatsoever, by reason whereof the payment of any tolls or duties shall be avoided or lessened; or shall take off, or cause to be taken off, any horse or other beast or cattle from any carriage, either before or after having passed through any toll-gate, or having passed through any toll-gate shall afterwards add or put any horse or other beast to any such carriage, and draw therewith upon any part of any turnpike road, so as to increase the number of horses or other beasts drawing the said carriage after the same shall have passed through any toll-gate, whereby the payment of all or any of the tolls shall or may be evaded; or if any person shall do any other act whatever in order or with intent to evade the payment of all or any of the tolls, and whereby the same shall be evaded, every such person shall for every such

(*x*) This word is used as synonymous with "turnpike gate:" *Barnes v. White*, 1 C. B. 192.

Forcibly
passing
through
turnpike.

(*y*) See Form of Conviction on this section, Appendix, No. 62. A defendant having been convicted of forcibly passing a turnpike gate without paying toll, the sessions, on appeal, rejected evidence to shew that the gate had been unlawfully erected; and the Court of King's Bench refused a mandamus to compel the sessions to receive such evidence, the admissibility of it being exclusively a question for the justices. The Court also refused a mandamus to the sessions to hear an original complaint touching the conduct of the trustees in the erection of the gate, after a lapse of twenty-six years from the time when it was erected, leaving it to the party to proceed by indictment for the nuisance, or by an action of trespass if his passage was obstructed: *Rex v. Cambridgeshire Justices*, 1 D. & R. 325.

offence forfeit and pay any sum not exceeding five pounds (z).

EVADING,
TOLLS.

XLII. And be it further enacted, That it shall and may be lawful for the trustees or commissioners of any turnpike roads, from time to time as they shall see convenient, to compound and agree, for any term not exceeding three years at any one time, with all or any of the inhabitants of the several parishes, hamlets, or places, to or through which such road may lead or pass, for the passing of their horses, cattle, or carriages, through all or any of the toll-gates to be erected on such road, or on the sides thereof; which composition shall be paid yearly in advance, and in default thereof the composition or agreement with the person or persons making such default shall thenceforth be void; and all such composition money shall be paid and applied in such manner as the tolls are directed to be paid and applied: Provided always, That no such composition shall extend to the additional tolls for overweight hereinbefore directed to be taken; but all such additional tolls shall be demanded and recovered notwithstanding any composition for tolls.

Trustees may compound for tolls, for a term not exceeding three years. [Repealed by 4 G. 4, c. 95, s. 11, infra.]

XLIII. And be it further enacted, That it shall and may be lawful for the trustees or commissioners appointed in and by virtue of any Act of Parliament for the repairing and amending any turnpike roads, in case no power or effectual power should be given to them under the Act by which they are appointed, and they are hereby empowered, at a meeting to be held for that purpose (of which one calendar month's notice shall be given in writing, to be affixed on all turnpike gates which shall be then erected upon such roads, and in some public newspaper circulated in that part of the country), from time to time to lessen and reduce (b) all or any of the tolls granted by any of the said respective

Trustees may reduce tolls (a);

(z) A conviction under this section adjudged that "A. B. hath forfeited for the said offence the sum of 2*l.* 2*s.*" It was held not necessary that *payment* of the penalty should be adjudged: *Barnes v. White*, 1 C. B. 192. A demand of the penalty is not necessary before issuing a distress warrant: *Ib.* As to evading and obstructing the weighing of carts, &c., see ss. 20—24; and as to fraudulently claiming exemptions, see sect. 36, and 9 G. 4, c. 77, s. 17; and see 3 G. 4, c. 126, s. 11.

(a) See 2 & 3 Vict. c. 46.

(b) See Form of Order for reducing Tolls, Schedule, No. 7.

**REDUCING
TOLLS.**

and afterwards advance them.

Reduction not to be made without consent of creditors in certain cases.

Reduction or advance of tolls to be made proportionably.

Acts, for and during such time as the said trustees or commissioners shall think proper; and afterwards, at any meeting to be held as aforesaid, from time to time, as they shall see occasion, to advance all or any of the tolls so lessened to any sum or sums of money not exceeding the several rates granted by such Acts of Parliament and this Act respectively: Provided nevertheless, that, where the whole money borrowed on the credit of the tolls granted by any such Act shall not have been paid and discharged, no such tolls shall be lessened or reduced without the consent of the person or persons entitled to five-sixths of the money remaining due upon such respective tolls (c).

XLIV. Provided also, and be it further enacted, That, in all cases where the trustees or commissioners of any turnpike road shall reduce or advance the tolls on the road or roads for which they shall act, such reduction or advance shall be made as to waggons, carts, and other carriages, the breadth of the wheels whereof is regulated by this Act, with reference to the proportion or scale of tolls payable on such waggons, carts, or other carriages, according to the breadth of the wheels thereof; (that is to say), the trustees or commissioners making the reduction or advance shall reduce or advance the toll payable on waggons, carts, or other such carriages, having the fellies of the wheels thereof of the breadth of six inches, and shall then take and demand double or other proportions (as the case may be) of such reduced or advanced tolls on waggons, carts, or other carriages, having the fellies of the wheels thereof of a greater or less breadth than six inches; and the reduction or advance of the proportion of toll to be payable by this or any other Act of Parliament, in respect of the breadth of wheels, or any other reduction or advance of tolls, to be made in any other way than in manner aforesaid,

(c) As to the power of the trustees to hire and afterwards to discontinue or reduce the tolls of any toll-bar near their own road, see 4 G. 4, c. 95, s. 54; and as to the power to reduce tolls on waggons with flat wheels, see 3 G. 4, c. 126, s. 9, ante, p. 9.

shall be null and void to all intents and purposes whatsoever (*d*). TOLL GATES.

XLV. And be it further enacted, That no toll-gate shall hereafter be erected on the side of any turnpike road, unless the same be ordered by the trustees or commissioners at a meeting, of which fourteen days' public notice shall have been given in writing, affixed upon all the toll-gates erected on such road within ten miles of the place where such intended gate is to be erected, and within the trust for erecting the same, and also in some public newspaper circulated in that part of the country, specifying the place where such toll-gate is proposed to be erected, and unless five trustees or commissioners at least shall sign the said order at such meeting.

Restriction as to the erecting side gates.
[Repealed by 9 G. 4, c. 77, s. 3.]

XLVI. And be it enacted, That if the trustees or commissioners appointed to put any Act of Parliament made for the repair of any turnpike road into execution, shall exceed their power by erecting or continuing any gate or gates, turnpike or turnpikes, where they have not any power, by virtue of any Act of Parliament, to erect such gate or gates, turnpike or turnpikes, it shall and may be lawful for the justices of the peace for the limit where any such gate or gates, turnpike or turnpikes, is or shall be erected or continued, in their general quarter session assembled, upon complaint of such excess of power in such trustees, in a summary way to hear and determine whether such power has been exceeded, and if such power has been exceeded, to order the sheriff of the county, who is hereby authorised and required to execute such order, to remove any such gate or gates, turnpike or turnpikes (*e*).

If trustees cause gates to be erected contrary to any Act of Parliament, justices may order them to be removed.

(*d*) This provision was rendered necessary by the decision in *Ridge v. Garlick*, 2 Moore, 481, ante, p. 7. See 4 G. 4, c. 95, s. 20, prohibiting the trustees from reducing tolls for overweight within ten miles of London; and see *Rex v. Bury and Stratton Road Trustees*, 4 B. & C. 361, 6 D. & R. 361, as to the construction of a local Act authorising a reduction of tolls. As to double tolls, where the trustees have the power of imposing such at different periods of the year, see 2 & 3 W. 4, c. 124, ss. 1, 2.

(*e*) It is neither usual nor convenient to erect turnpikes in the middle of large towns, which may obstruct the necessary inter-

MORTGAGEES
OF TOLLS.

Mortgagees
in possession
of the tolls
to account to
the trustees (f).

Penalty, 50*l*.

If mortgagee
keeps possession
after he

XLVII. And be it enacted, That all and every mortgagee and mortgagees that hath or have taken or been in possession, or shall hereafter take or be in possession of any toll-gate or bar set up or erected on any turnpike road, or of any lands or tenements, the rents and profits whereof are appropriated to the repairs of any part of any turnpike road, shall, within twenty-one days after he, she, or they shall have received notice in writing from the trustees or commissioners of such turnpike road, render an exact account in writing to such trustees or commissioners, or to such person as they shall appoint, of all monies received by such mortgagee or mortgagees, or by any other person or persons for his, her, or their use and benefit, or by his, her, or their authority, at such toll-gate or bar or otherwise, and what he, she, or they have expended in keeping or repairing the same; and in case he, she, or they shall neglect to render such account when required as aforesaid, he, she, or they shall severally forfeit and pay to the said trustees or commissioners, for every refusal, neglect, or omission, the sum of fifty pounds, to be applied to the use of the road on which such toll-gate or bar shall be erected.

XLVIII. And be it further enacted, That if any such mortgagee or mortgagees shall keep possession of

course amongst the inhabitants, or even hinder an inhabitant from sending his horse to water without paying the toll: per Lord *Mansfield*. This was in a case where the question was, whether, on the description of a road as leading “to and from the town of Battle,” omitting the word “through,” the town was included, the trustees having erected a turnpike in the middle of it; and the town was held not to be included: *Hammond v. Brewer*, 1 Burr. 376. And as to the construction of the word “town” in turnpike and other Acts, see *R. v. Cottle*, 16 Q. B. 412; *Reg. v. Fisher*, 8 Car. & P. 612; *Elliott v. South Devon Railway Company*, 2 Exch. 725.

(f) Mortgagees (under Acts of Parliament passed since 1850) cannot enter into possession while their interest is punctually paid: 13 & 14 Vict. c. 79, s. 5.

any toll-gate or bar by him, her, or themselves, or by any other person or persons on his, her, or their behalf, and receive the tolls or duties thereat, or of any such rents and profits as aforesaid, after such mortgagee or mortgagees shall have received the full sum or sums of money due on their respective mortgage or mortgages and the interest thereof, with costs, such mortgagee or mortgagees shall forfeit and pay, as a penalty, to the trustees or commissioners, double the sum or sums of money he, she, or they shall have received, over and above the sum or sums of money due as aforesaid, with treble costs of suit, to be recovered by the treasurer or clerk to such trustees or commissioners, by action of debt, bill, plaint, or information, in any of his Majesty's courts of record, which when recovered shall be applied to the use of the respective road or roads on which such toll-gate or bar shall be placed or such rents appropriated.

**MORTGAGEES
OF TOLLS.**

—
has received the money due, he shall forfeit double the sum and treble costs.

XLIX. And be it further enacted, That if any mortgagee or mortgagees of any tolls, toll-gates, bars, chains, toll-houses, and buildings, on any turnpike road, shall seek to obtain the possession of the said toll-gates, bars, chains, toll-houses, and buildings, in order to pay himself, herself, or themselves the principal money and interest, or any part thereof, due to him, her, or them, it shall be competent for him, her, or them, as lessor or lessors of the plaintiff, and upon his, her, or their demise only, and without uniting-in such demise the other mortgagees of the said tolls and premises, to obtain such possession; but such person or persons who shall obtain the possession thereof, shall not apply the tolls which may consequently be received by him, her, or them, to his, her, or their own exclusive use and benefit, but to and for the use and benefit of all the mortgagees of the said premises, *pari passu*, and in proportion to the several sums which may be due to them as such mortgagees (*g*).

An action of ejectment may be supported by one mortgagee:

But the tolls shall be applied for the benefit of all the mortgagees.

(*g*) This section obviates a doubt suggested in *Doe d. Banks v. Mortgagee Booth*, 2 Bos. & P. 219, viz. that, by the ejectment, a mortgagee

TOLL COLLECTORS.

On death of collector, trustees may nominate another till next meeting.

[Repealed by 4 G. 4, c. 95, s. 48.]

If collector, &c., refuse to

L. And be it further enacted, That it shall and may be lawful for any two or more trustees or commissioners of any turnpike road, upon the death of any collector appointed to collect the tolls upon such turnpike road, to nominate and appoint some other fit person in his place until the next meeting of the trustees or commissioners of such road, which person so to be nominated and appointed shall have the like power and authority, and be accountable in the same manner in all respects, as the person so dying had or would have been if living; and that if any toll collector or deputy collector, who shall be discharged from his office by the trustees or commissioners authorised for that purpose, shall refuse to deliver up the possession of the house, buildings, and appurtenances which he enjoyed in right of his appointment

might obtain a preference. In that case, the trustees under a turnpike Act having demised to one of several mortgagees such proportion of the tolls arising from the road, and of the toll-houses and toll-gates for collecting the same, as the sum advanced by him bore to the whole sum raised on the credit of the tolls, the mortgagee brought ejectment for the toll-gates, in order to repay himself the interest due to him; it was held, that he might well maintain his action, notwithstanding a provision in the Act that all the mortgagees should be creditors upon the tolls in equal degrees. In a later case, where a local Act secured to mortgagees under a former Act "a preference and priority of charge and payment," it was held, that a mortgagee under the new Act might nevertheless recover the toll-house and gates in ejectment (pursuant to 3 G. 4, c. 126, s. 49), only remaining accountable to the other mortgagees for such portion of the tolls as they were entitled to in respect of their advances: *Doe d. Thompson v. Lediard*, 4 B. & Ad. 137, 1 Nev. & M. 683. And it has been held, also, that this section enables a mortgagee, whose mortgage is made under s. 81, to recover, in his own name only, the toll-houses, &c., in ejectment, though there are prior unsatisfied mortgagees: *Doe d. Walton v. Penfold*, 3 Q. B. 757; *Doe d. Levy v. Horne*, *Ib.* And this, even where another mortgagee subsequently commenced another ejectment, laying the demise on a day earlier than the plaintiff's, and the trustees, before trial, confessed judgment therein: *Doe d. Butt v. Rous*, 1 E. & B. 419. As to proceedings in equity against a mortgagee in possession of tolls, for an account &c., see *Watts v. Lord Eglinton*, 1 Coop. C. C. 25. See 9 G. 4, c. 77, ss. 10—13. For the trustees' power to raise money by mortgage, see sect. 78 of this Act.

to that office, within two days after notice of his discharge shall be given to him or left at his house; or if the wife or family of any such toll collector or deputy who shall die as aforesaid shall refuse to deliver up the possession of such house, building, and appurtenances, within four days after such new appointment shall be made as aforesaid, then and in either of the said cases it shall and may be lawful for any justice of the peace for the county where such turnpike house shall be, by warrant (h) under his hand and seal, to order a constable or other peace officer, with such assistance as shall be necessary, to enter such house and premises in the day-time, and to remove the persons who shall be found therein, together with their goods, out of such house, and to put the new appointed officer into the possession thereof.

TOLL COLLECTORS.

—
deliver possession of the house, &c., justices may remove them.

LI. And be it further enacted, That no collector, or person renting such tolls, or residing in such toll-house as aforesaid, and no apprentice or servant of any such collector or person, shall thereby gain a settlement in any parish or place whatsoever; and that no tolls to be taken at any gate erected or to be erected by the trustees or commissioners of any turnpike road, nor toll-house erected or to be erected for the purpose of collecting the same, nor any person in respect of such tolls or toll-house, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial levy whatsoever (i).

No person to gain a settlement by renting tolls or residence in toll-houses, or to be rated.

(h) See the Form of Warrant, Schedule, No. 15.

(i) See a similar provision as to the toll collectors occupying houses erected for weighing engines, &c., 4 G. 4, c. 95, s. 31. The 13 G. 3, c. 84, s. 56, did not extend this provision to the servants and apprentices of toll-gate keepers, and it was therefore held by the Court of King's Bench, that a person might gain a settlement in the parish where he resided and rented a tenement of above 10*l.* per annum, although his residence was in a turnpike house as the toll collector's servant: *Rex v. Denbigh*, 5 East, 333. But the collector of the tolls of an Act for paving, lighting, and regulating the streets of Durham, and other local objects, was held to be within this provision, and consequently not to gain a settlement: *Rex v. Eleet*, 11 East, 93. See also *Rex v. St. Andrew the Less*, 10 B. & C. 747. However, the collector of the tolls of a bridge, which, although in the line of the turnpike road, did not form part of it, being vested in a different company of proprietors, was held to have gained a settlement: *Rex v. Bubwith*, 1 M. & Sel. 514. And see 6 G. 4, c. 67, repealing 59 G. 3, c. 50.

TOLL COLLECTORS.

Collectors permitting carriages to pass otherwise than allowed by the Act, and not prosecuting, to forfeit not exceeding 5*l*.

LII. And be it further enacted, That, if any collector or other person appointed to collect the tolls on any turnpike road, shall permit or suffer any waggon, wain, cart, or other carriage to be drawn or pass upon any turnpike road within the view or with the knowledge of such collector or toll gatherer, or to pass through any toll-gate or bar, with wheels of a less breadth or of a different construction, or *drawn with a greater number of horses than by this Act allowed (k)*, or without such names and descriptions painted thereon as are hereinafter directed, and shall not within the space of one week proceed for the recovery of the forfeiture or penalty hereby inflicted, or shall allow any coach, chariot, waggon, cart, or other carriage, or any passenger, to pass through any toll-gate at which such collector or other person shall be stationed, without paying the toll payable, or shall be guilty of any other misconduct in his office, every collector or other person so offending, and being thereof convicted before one justice, shall forfeit for every such offence any sum not exceeding five pounds, as the justice by and before whom such offender shall be convicted shall judge proper.

Toll collectors to put up their names on a board, &c.

[*Repealed* by 4 G. 4, c. 95, s. 29.]

LIII. And be it further enacted, That every toll collector on every turnpike road shall place or cause to be placed on some conspicuous parts of the fronts of the several toll-houses at which they shall be respectively stationed, and so that the same shall appear to public view, their christian and surnames, painted in black on a board with a white ground, each of such letters of such name or names to be at least two inches in length, and of a breadth in proportion; and that such board shall be and remain at such toll-house during the whole of the time that the person whose name shall be expressed thereon shall be on duty thereat; and every such collector shall place, or cause to be placed, on the front of the toll-house or toll-houses at which such collectors shall be stationed, the board hereinbefore directed to be provided by the trustees or commissioners, containing the usual name of the turnpike gate where the board shall be affixed, and also the list of the tolls payable at such gate, and of the several gates cleared by the payment of toll at the gate where such collector or

(k) Repealed by 4 G. 4, c. 95, s. 27, as to the words printed in italics.

collectors shall be stationed as aforesaid; and if any collector of the said tolls shall not place such boards respectively as aforesaid, and keep the same there during the time he shall be such collector as aforesaid, or shall demand and take a greater or less toll from any person than he shall be authorised to do by virtue of the powers of any Act, or of the orders and resolutions of the trustees or commissioners made in pursuance thereof, or shall demand and take a toll from any person or persons who shall be exempt from the payment thereof, and who shall claim such exemption, or shall refuse to permit or suffer any person or persons to read, or shall in anywise hinder any person or persons from reading the inscriptions on such boards respectively, or shall refuse to tell his christian and surname to any person or persons who shall demand the same, on being paid the said tolls, or any of them, or shall, in answer to such demand, give a false name or names, or shall refuse or omit to give to the person paying the toll a ticket denoting the payment of the tolls, and naming and specifying the toll-gate at which such ticket has been delivered, and the toll-gate or toll-gates (if any) freed by such payment, or, upon the legal toll being paid or tendered, shall unnecessarily detain, or wilfully obstruct, hinder, or prevent any passenger or passengers from passing through any turnpike or toll-gate, or shall make use of any scurrilous or abusive language to any trustee or commissioner, traveller, or passenger, then, and in every such case, every such toll collector shall forfeit and pay any sum not exceeding five pounds for every such offence.

TOLL COLLECTORS.

Collector neglecting to do so, or taking a greater or less toll than what is authorised, or refusing a ticket on payment of toll, or obstructing passengers, to forfeit not exceeding 5*l*.

LIV. Provided always, and be it enacted, That in case any toll collector, or person acting as such, shall offend against any of the provisions of this Act, whereby any penalty shall be incurred, and shall abscond or absent himself so as not to be found, then it shall and may be lawful for any justice of the peace, before whom any such toll collector or person shall have been convicted of any such offence, in case of such collector or other person absconding after conviction, or in case of his or her absconding previous to conviction, then for any other justice of the peace acting for the county, on an examination of the circumstances, and ascertaining by the examination of witnesses that such offence has been committed by the person absconding, to order and adjudge that the penalty incurred as aforesaid shall be paid by the lessee or farmer of the tolls under whom such collector or other person shall act; all which penalties shall be levied and recovered from such

If toll collectors abscond, penalties to be levied on lessees of tolls.

TOLL COLLECTORS.
—

Powers for trustees or commissioners to farm out the tolls.

lessee or farmer, and applied in manner hereinafter directed (*l*).

LV. And be it further enacted, That it shall and may be lawful for the trustees or commissioners of every turnpike road, at a public meeting, *to let to farm (m)* the tolls of the several gates erected upon their respective turnpike roads, in the manner hereinafter men-

(*l*) See sect. 141, &c. And see further as to toll collectors, ss. 52, 55; 4 G. 4, c. 95, s. 30, &c.

(*m*) See this power extended by 4 G. 4, c. 95, s. 52. In *Paul v. Meek*, 2 Y. & J. 116, it was argued that a lease of tolls was a lease of hereditaments, and required a stamp under 55 G. 3, c. 184, Sched. pt. 1: "Lease of any lands, hereditaments, &c. at a yearly rent;" but the Court gave no opinion on this point; for, as the defendant had executed a counterpart, which was duly stamped, it was held that he was estopped from disputing its admissibility, or producing the original indenture to impeach its validity. And see *Doe d. Levy v. Horne*, 3 Q. B. 757. See *Pearce v. Morrice*, 3 B. & Ad. 396, as to the amount of stamp necessary for a counterpart, &c. And see Forms of Contract and Lease, Appendix, Nos. 60, 61.

The declaration in an action for rent payable under an agreement with turnpike trustees, demising tolls and toll houses, need not shew that the forms required by this section were observed in the letting: *Willington v. Browne*, 8 Q. B. 169. It must, however, state that the demise was in writing, signed by two or more trustees, or their clerk: *Oldroyd v. Crampton*, 4 Bing. N. C. 24. Where the agreement was produced in evidence, stating that the trustees had contracted &c. with the lessee, "witness the hands of C. and D., trustees, and of" the defendant, and these signatures were proved; this instrument was held to be evidence against the defendant that C. and D. were trustees, sufficient to support the action: *Willington v. Browne*, *supra*.

Even where the forms required by the statute have not been strictly complied with, and the renter, therefore, is illegally appointed, he may recover, on an account stated, tolls for which he has given credit, no objection being made by the trustees, and the party to whom the credit was given having by his own acts admitted the state of the account: *Peacock v. Harris*, 10 East, 104, ante, p. 32; see *Maurice v. Marsden*, 19 L. J., C. P., 152.

tioned, although no express power shall have been given by any Act or Acts for that purpose; and that whenever any tolls shall hereafter be let to farm by virtue of the powers given by this or any other Act or Acts of Parliament, the following directions shall be observed; (that is to say), the trustees or commissioners shall cause notice (*n*) to be given of the time and place for letting the same, at least one month (*o*) before the day to be appointed for that purpose, by affixing the same upon every toll-gate belonging to such turnpike road, and also by insertion thereof in some public newspaper (*p*) circulated in that part of the country, and specifying in every such notice the sum which the said tolls produced in the preceding year, clear of the salary for collecting the same, in case any hired collector was appointed, and that they will let such tolls by auction to the best bidder, on his producing sufficient sureties for payment of the money monthly, or otherwise (as in such notice shall be specified), and that they will be put up at the sum which they were let for or produced in the preceding year, clear of the salary of the collector; and to prevent fraud or any undue preference in the letting thereof, the trustees or commissioners are hereby required to provide a glass with so much sand in it as will run from one end of it to the other in one minute, which glass, at the time of letting such tolls, shall be set upon a table, and immediately after every bidding the glass shall be turned, and as soon as the sand is run out it shall be turned again, and so for three times, unless some other bidding intervenes, and if no other person shall bid until the sand shall have run through the glass three times, the last bidder shall be the farmer or renter of the said tolls (*q*), and shall forthwith enter into a proper agreement for the

LETTING
TOLLS.

Notice to be
given for let-
ting the tolls.

Tolls to be
put up at the
sum produc-
ed the pre-
ceding year.
Mode of re-
ceiving bid-
dings.

(*n*) See the Form of Notice, Schedule, No. 6.

(*o*) A lunar month.

(*p*) As to what is a sufficient publication in newspapers, see *Tibbets v. York*, 5 B. & Ad. 605.

(*q*) See *Levy v. Pendergrass*, 2 Beav. 415.

LETTING
TOLLS.
—

If tolls be
not let at
such auction,
a private
tender may
be accepted.

Penalty on
collectors
taking more
or less than
the authoris-
ed toll, 5*l*.

taking thereof, and paying the money at the times specified in such notice, with such surety or sureties (*r*) for payment thereof, and under such conditions and in such manner as the said trustees or commissioners shall think fit; and if the person being the last bidder shall not forthwith enter into such agreement, it shall and may be lawful to put up the said tolls again immediately for another bidder, and in like manner to continue putting up the same until a bidder shall be found who shall enter into such agreement (*s*); and in case no bidder shall offer, or in case the same shall not be let at such auction, it shall be lawful for the said trustees or commissioners to accept a private tender for the same, and to demise or let to farm, or agree to demise or let to farm, all or any of such tolls, at any sum not less than the sum at or for which they shall then have been last let; or the said trustees or commissioners may appoint a collector of such tolls, or fix some future day for the letting thereof, as they shall judge most proper, upon giving such notice thereof as aforesaid, and shall and may in that case put them up at such sum as they shall think fit; and if the person or persons who shall be the farmer or renter or collector or collectors of such tolls shall take a greater or less toll from any person or persons than what is authorised or directed by this or the particular turnpike Act, he or they shall, for every such offence, forfeit the sum of five pounds (*t*), and the said

(*r*) See *Lee v. Nixon*, 1 A. & E. 201, 3 N. & M. 441, as to the construction of a contract entered into between trustees and a renter and his surety.

(*s*) It would seem from the case of *Pearce v. Morrice*, 4 N. & M. 49, 2 A. & E. 84, that, in letting tolls, the requirements of the local Acts must be attended to as well as those of the general Acts, if they can be made to consist with each other.

(*t*) See Form of Conviction, Appendix, No. 64. This penalty is only recoverable before the magistrates, 4 G. 4, c. 95, s. 50; by s. 30 of that Act, the penalty is any sum not exceeding 5*l*. See further, as to collectors offending, sects. 52, 54; 4 G. 4, c. 95, s. 30.

agreement for renting the tolls shall, if the said trustees or commissioners shall think fit to vacate the same, become and be null and void: Provided always, that at all such lettings the trustees or commissioners shall be entitled to bid for the tolls so to be let, either by themselves or their clerk or treasurer, or any other person by them respectively authorised (*u*); provided also, that no such tolls shall be demised or leased for any longer term than three years at any one time (*x*).

LETTING
TOLLS.

Limiting
leases to
three years.

LVI. Provided always, and be it further enacted, That, on every letting of any tolls, the said trustees or commissioners shall, if they shall think fit, take of the renter or farmer thereof one, two, or more months' rent in advance before they shall put such renter or farmer in possession of the toll-gate, bar, toll-house, or turnpike, at which such tolls are to be collected; and that in every agreement to be entered into by any trustees or commissioners for the letting of any tolls, the rent or money payable for such tolls shall be reserved and made payable monthly, or otherwise, as in the notice for letting the said tolls shall be specified; and the renter or farmer of such tolls shall produce two sufficient sureties to join in the said agreement, undertaking on their parts for the due and punctual payment of the rent or sum of money to be paid for the said tolls, according to the terms of the agreement entered into by him; and in every case where the terms of such agreement shall not be fulfilled, but the rent or sum of money to be paid at the commencement of any one month shall not be paid when the same shall become due, but shall remain un-

How rent of
tolls is to be
paid and
secured.

[*Repealed* by
4 G. 4, c. 95,
s. 51.]

(*u*) See a similar provision in 4 G. 4, c. 95, s. 53. An agreement, signed by the clerk to the trustees, which recited that A. B. was the highest bidder for, and had become the renter of, certain tolls, and stated that the clerk did thereby, on behalf of the trustees, agree to let, and A. B. did thereby agree to take, the tolls and toll-house, was held to be a sufficient compliance with the statute: *Shepherd v. Hodsman*, 21 L. J., Q. B., 263.

(*x*) The 4 G. 4, c. 95, ss. 52, 54, authorises the letting of tolls in lots, and allows the trustees to farm the tolls of any neighbouring trust. As to the recovery of tolls by lessees, although informally appointed, see *Peacock v. Harris*, 10 East, 104; ante, pp. 32, 44; *Maurice v. Marsden*, 19 L. J., C. P., 152. The 8 & 9 Vict. c. 106, s. 3, which provides that a lease required by law to be in writing, of any tenements or hereditaments, shall be void, unless made by deed, does not apply to lettings of tolls under this section: *Shepherd v. Hodsman*, 21 L. J., Q. B., 263.

**LETTING
TOLLS.**

paid for three days after the same shall become due, then and in every such case the trustees or commissioners making any such agreement shall, and they are hereby empowered, if they shall think fit, to declare the said agreement void, and to re-enter and take possession of any such toll-gate, bar, or toll-house, and the tolls there collected, and to relet the same in manner hereinbefore directed, or to appoint a collector or other fit and proper person to collect and receive the same, and to put out and remove the person or persons so failing in their agreement (y).

Contracts and agreements to be valid when signed by the trustees, &c.

LVII. Provided always, and be it further enacted, That all contracts and agreements to be made or entered into for the farming or letting the tolls of any turnpike roads, signed by the trustees or commissioners letting such tolls, or any two or more of them, or by their clerk or treasurer, and the lessee or farmer, and his sureties, of such tolls respectively, shall be good, valid, and effectual to all intents and purposes, notwithstanding the same may not be by deed or under seal; any Act or Acts of Parliament or law to the contrary thereof notwithstanding (z).

Lessees of tolls may appoint persons to receive the same, who shall be subject to the like penalties as collectors appointed by the trustees.

LVIII. And be it further enacted, That, during such time as the tolls, or any part or parts thereof, shall be leased to any person or persons whomsoever, it shall be lawful for the lessee or lessees, farmer or farmers thereof, or such other person or persons as he, she, or they shall by writing or writings under his, her, or their hand or hands authorise or appoint, to demand and take such

(y) See 4 G. 4, c. 95, ss. 52, 59, for the provisions substituted instead of this clause.

(z) See *Shepherd v. Hodsman*, 21 L. J., Q. B., 263, ante, p. 47. This section seems to imply that tolls are incorporeal hereditaments, and would pass only by deed: 3 *Burn's Justice*, 737. See *Paul v. Meek*, 2 Y. & J. 116; *Pearce v. Morrice*, 3 B. & Ad. 396, 4 N. & M. 49; ante, p. 44. Upon this section it has been decided, that if two or more persons be appointed to the office of clerk to the trustees, they must all join in executing the contract; and a contract signed by only one of two clerks was declared void: *Bell v. Nixon*, 9 Bing. 393. But see *Lee v. Nixon*, 1 A. & E. 201, 3 N. & M. 441; *Reg. v. Marquis of Salisbury*, 8 A. & E. 716; *Hellings v. Pratt*, 6 Jur. 915. And see further as to contracts, 4 G. 4, c. 95, s. 78, and 9 G. 4, c. 77, s. 11, &c.

LETTING
TOLLS.
—

tolls so leased, demised, or farmed, and to use all such means and methods for the recovery thereof, in case of non-payment or evasion, as any collector of such tolls appointed under or by virtue of any Act of Parliament for the making of turnpike roads, or by this Act, is authorised and empowered to use; and such lessee or lessees, farmer or farmers, or other person or persons as aforesaid, so demanding and taking such tolls, shall be subject to the like pains, penalties, and forfeitures, and shall be liable to the like actions and prosecutions, as any collector of such tolls appointed by the trustees or commissioners is subject or liable to (a).

LIX. And be it further enacted, That, in case any dispute, suit, or litigation shall arise, touching or in any-wise relating to the tolls granted by any Act of Parliament, the person or persons appointed to collect the same, or any other person or persons acting under the authority of the trustees or commissioners, shall not be incompetent to give evidence in any such dispute, suit, or litigation, on account of his being appointed to collect such tolls (b).

Collector
not to be in-
competent to
give evi-
dence.

LX. And be it further enacted, That the right, interest, and property of and in all the toll-gates and toll-houses, weighing machines, and other erections and buildings, lamps, bars, toll boards, direction boards, mile stones, posts, rails, fences, and other things which shall have been or shall be erected and provided in pursuance of any Act of Parliament for making turnpike roads, with the several conveniences and appurtenances thereunto respectively belonging, and the materials of which the same shall consist, and all materials, tools, and implements which shall be provided for repairing the said roads, and the scrapings of the said roads, shall be vested in the trustees or commissioners acting in pur-

The property
of houses, &c.
vested in
trustees.

(a) See 4 G. 4, c. 95, ss. 43, 49.

(b) See further as to evidence, 4 G. 4, c. 95, s. 84, &c. Now, by 6 & 7 Vict. c. 85, all objections to the competency of witnesses, on the ground of interest, are removed.

ROAD PRO-
PERTY, &c.

—
Actions may
be brought in
the name of
the clerk.

suance of such Act for the time being (c), and they are hereby authorised and empowered to apply and dispose of the same as they shall think fit, and to bring or cause to be brought any action or actions, and to prefer and prosecute, or order and direct the preferring and prosecuting of any informations or *indictments* (d), against any person or persons who shall dig up, break or pull down, steal, take or carry away, spoil, destroy, injure or damage, any of the toll-gates or toll-houses, weighing machines, or other erections or buildings, lamps, bars, toll boards, direction boards, milestones, posts, rails, fences, and other things, or any of the conveniences and appurtenances thereto belonging, or any of the tools, implements, or materials aforesaid, or shall interrupt them, the said trustees or commissioners, or any of their officers, in the possession thereof; in all which proceedings it shall be sufficient to state generally such articles to be the property of the *clerk* (d) for the time being to the said trustees or commissioners.

Justices of
peace to be
trustees.

LXI. And be it further enacted, That all his Majesty's justices of the peace for the time being acting for

Road pro-
perty.

(c) The trustees have no interest in the soil of the road: *Davison v. Gill*, 1 East, 69; *Rex v. Mersey Navigation*, 9 B. & C. 95, *Rex v. Thomas*, Id. 114, unless it be expressly vested in them by Act of Parliament. See note (d) on sect. 86, post, p. 79. And by the express provisions of 7 & 8 G. 4, c. 24, s. 18, mines are declared to belong to the original owner of the soil. The rights of pasturage along the sides of turnpike roads are also excepted from the operation of 4 G. 4, c. 95, s. 75: see the notes on that section. By the above section, however, the buildings and moveable road property are expressly vested in the trustees; and by 9 G. 4, c. 77, s. 16, the tolls to be collected on the roads are likewise vested in them. For the purpose of effecting a sale of unnecessary land, &c., the soil thereof is also expressly vested in them under certain restrictions: see s. 86, post, p. 77. And see 4 G. 4, c. 95, ss. 57, 63, as to the sale and disposal of unnecessary toll-houses and property.

(d) Repealed as to indictments in the name of the clerk by 7 G. 4, c. 64, s. 32. And see now as to prosecutions on account of road property, 7 G. 4, c. 64, ss. 16, 17.

the county or counties through which any turnpike road now does or hereafter shall pass, shall be added to and joined with the trustees or commissioners for making, repairing, or maintaining every such turnpike road, and shall, on qualifying themselves as hereinafter mentioned, have all the same powers and authorities, to all intents and purposes, as if the said justices had severally been named or elected trustees or commissioners in or under any Act or Acts of Parliament under which such roads shall be made, repaired, or maintained (e).

QUALIFICA-
TION OF
TRUSTEES.
—

LXII. And be it further enacted, That no person who shall hereafter be chosen or appointed a trustee or commissioner, shall be qualified or capable of becoming and acting as a trustee or commissioner in the execution of any Act of Parliament for making, repairing, or maintaining any turnpike road, unless he shall be in his own right, or in the right of his wife, in the actual possession or receipt of the rents and profits of freehold or copyhold lands, tenements, or hereditaments, of the clear

Qualification
of trustees.

(e) See 5 G. 4, c. 69, extending this privilege to justices of divisions, &c. The appointment of trustees (or commissioners, these words being declared by 7 & 8 G. 4, c. 24, s. 19, to be synonymous) is always made by the local Act, but they must be qualified according to the terms contained in these general laws. The authority of trustees is a creature of the law, and the limits of their jurisdiction and all their powers are provided by *local* Acts, which are temporary, and usually require to be renewed every thirty years. Though their authority is thus limited, a permanency is given to their acts by several sections of the general Turnpike Acts, and they have a power of cancelling mortgages made by their predecessors; and a new way made by them will continue to be a public highway, by virtue of the general Acts, after the authority of the trustees has ceased: See *Rex v. Winter*, 8 B. & C. 785; 9 G. 4, c. 77, s. 10, &c.; 3 *Burn's Justice*, 693. To state all the powers of the trustees would be to repeat nearly all the provisions of the Turnpike Acts, the due execution of which is made to depend in a great measure upon them. A summary of their duties and liabilities will be found in the Index; and see note on 7 & 8 G. 4, c. 24, s. 2, &c.

QUALIFICA-
TION OF
TRUSTEES.
—

yearly value of one hundred pounds above reprises, or shall be heir apparent of a person possessed of freehold or copyhold lands, tenements, or hereditaments of the clear yearly value of two hundred pounds above reprises; and unless he shall, before he shall act as such trustee or commissioner, take and subscribe the oath or affirmation following, before any two or more of the trustees or commissioners appointed or to be appointed by or in pursuance of such Act, who are hereby authorised and empowered to administer the same, in the words or to the effect following; (that is to say,) (*f*)

“I —— do swear, [*or*, being of the people called Quakers, do solemnly affirm,] That I truly and bonâ fide am, in my own right [*or*, in the right of my wife], in the actual possession and enjoyment of [*or*, in the receipt of rents and profits issuing out of] freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of one hundred pounds above reprises, [*or*, am heir apparent of ——, who to the best of my knowledge is seised of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of two hundred pounds above reprises], [*or*, that I am possessed of a personal estate of ten thousand pounds, clear of all debts and incumbrances, *as the case may be*].

So help me God.”

[*or*, being a Quaker, omit the words, “So help me God.”]

Qualification
by personal
property
within ten
miles of Lon-
don.

LXIII. Provided always, and be it enacted, That nothing herein contained shall hinder or prevent any person from acting as a trustee or commissioner of any

(*f*) Justices acting as trustees are not required to take any oath of qualification, 4 G. 4, c. 95, s. 34; and now, by 5 & 6 W. 4, c. 62, a declaration is in all cases to be substituted for the oath. See form of declaration of qualification and office together, Appendix, No. 39. The qualification of a trustee cannot be questioned indirectly; see ss. 64, 134, and *Pritchard v. Walker*, 3 Car. & P. 212. And see further as to the qualification of trustees, 4 G. 4, c. 95, ss. 32—36.

turnpike roads, any part of which are or shall be situate within ten miles of the Royal Exchange in London, who shall be possessed of personal property to the amount or value of ten thousand pounds, after payment of his debts.

QUALIFICA-
TION OF
TRUSTEES.
—

LXIV. Provided also, and be it further enacted, That no person appointed or to be appointed a trustee or commissioner in or by virtue of any Act for repairing turnpike roads, shall be capable of acting as such in the execution of any such Act, in any case where he shall be personally *interested* (g) (except as hereinafter provided), nor during the time he shall keep a victualling house, or other house of public entertainment, or who shall sell wine, cider, beer, ale, spirituous or other strong liquors by retail, or who shall be a lessee or farmer of the tolls on any turnpike road, or of any part or parts thereof; and if any person not being qualified as aforesaid, or being disqualified by any of the causes aforesaid, or not having taken and subscribed the oath hereinbefore mentioned, or, being a Quaker, not having made and subscribed the affirmation hereinbefore mentioned, shall nevertheless presume to act as a trustee or commissioner in the execution of any such Act, every such person shall for every such offence forfeit and pay the sum of fifty pounds to any person or persons who shall sue for the same, to be recovered, with full costs of suit, in any of his Majesty's courts of record at Westminsler, by action of debt or on the case, or by bill, plaint, suit, or information, wherein no essoign, protection, wager of law, or more than one imparlance shall be allowed; and the person so sued or prosecuted shall prove that he is qualified and not disqualified as aforesaid, or otherwise shall pay the said penalty, without any other proof or evidence on the part of the prosecutor than that such person had acted as a trustee or commissioner in the execution of any

Trustees not
to act where
interested,
or while
keeping a
victualling-
house, &c.

Penalty for
acting not
being quali-
fied, 50*l*.

(g) This word is explained by 7 & 8 G. 4, c. 24, s. 1: and see 3 G. 4, c. 126, s. 65, and 4 G. 4, c. 95, s. 37. As to what constitutes acting, see *Charlesworth v. Rudyard*, 1 C. M. & R. 498.

QUALIFICATION OF TRUSTEES.

Proceedings not to be impeached on account of disqualification.

Mortgagees on the tolls not disqualified on that account;

nor justices.

Trustees or commissioners not to hold places of profit, or be concerned in contracts, &c.

act for repairing turnpike roads (*h*): Provided nevertheless, that no act or proceeding touching the execution of any such act, which shall be done or performed by any such unqualified or disqualified person previously to his being convicted of the offence before mentioned, shall be thereby impeached or rendered nugatory, but all such proceedings shall be as valid and effectual as if such person had been duly qualified (*i*): Provided always, that no mortgagee or assignee of any mortgage or other security, or any lender of money upon the credit of the tolls, or receiving interest thereout for the same, shall on that account only be deemed unqualified to act as a trustee or commissioner in the execution of any such act; and any trustees or commissioners appointed or to be appointed under any such act, who are or shall be in the commission of the peace, may act as such justices of the peace, in the execution of any such act, notwithstanding their being such trustees or commissioners, except in such cases only wherein they shall be personally interested otherwise than as a trustee, commissioner, mortgagee, assignee, lender of money, or holder of any security on the credit of the tolls granted by any such Act.

LXV. And be it further enacted, That no trustee or commissioner of any turnpike road shall, from and after this Act shall be in force, enjoy any office or place of profit under any Act of Parliament in execution of which he shall have been appointed, or shall act as trustee or commissioner, or have any share or interest in, or be in any manner, directly or indirectly, concerned in any contract or bargain for making or repairing or in any way relating to the road for which he shall act, or for building or repairing any toll-house, toll-gate, or weighing engine thereon, or for supplying any materials for the use thereof; nor shall any such trustee or commissioner let out for hire any waggon, wain, cart,

(*h*) See sect. 134, and note thereon.

(*i*) See a similar provision, where the trustee has not taken the oath of office, 4 G. 4, c. 95, s. 32.

or other carriage, or any horse, cattle, or team, for the use of any turnpike road for which he shall act as a trustee or commissioner; nor by himself, or by any other person for or on his account, directly or indirectly, receive any sum or sums of money to his use or benefit out of the tolls collected on the road for which he shall act, during the time he shall be acting as a trustee or commissioner of such road; and if any person, after having been appointed or elected a trustee or commissioner of any turnpike road, shall, without having first duly resigned such office at some meeting of the trustees of the road for which he shall have been elected or appointed, hold any such office or place, or be concerned in any such contract or bargain, or shall sell any such tools or implements, or let out for hire any waggon, wain, cart, or carriage, horse, cattle, or team, or receive any money out of the tolls as aforesaid, every trustee or commissioner so offending shall for every such offence forfeit and pay the sum of one hundred pounds to any person or persons who shall sue for the same, and shall from and after the conviction of any such offence be incapable of acting as a trustee or commissioner of any turnpike road (*k*); and all acts, orders, RESTRICTIONS
ON TRUSTEES.
—
Penalty 100*l*.

Contracts.

(*k*) But this penalty is not to be incurred by reason of the trustees having shares in any canal company contracting for the conveyance of materials: 4 G. 4, c. 95, s. 37; and see 7 & 8 G. 4, c. 24, s. 1. Under the above section, a trustee has been held liable to the penalty for letting his horses and cart by the day to a contractor for the repair of the road. But the notice of action not stating that the trustee when he let out his horse and cart was acting as a trustee, it was held bad; and the notice being bad, the plaintiff was barred, not only of his right to costs, but of his right to sue: *Towsey v. White*, 7 D. & R. 810, 5 B. & C. 125. See *Rex v. Trustees of Great Dover Road*, 5 Ad. & E. 692. And in an action for the penalty imposed by this section, where a trustee accepted the office of treasurer, but allowed the clerk to receive the rent of the tolls, &c., and never himself exercised any control, or made any profit of the money, it was held that the question for the jury was, not whether the defendant made any profit, but

RESTRICTIONS
ON TRUSTEES.
—
and bargains
void.

Proviso.

matters, and things, made or done as a trustee or commissioner by the party so convicted, shall from thenceforth be null and void, to all intents and purposes; and all and every such contract and bargain shall be and the same is hereby declared to be void, and shall not be enforced against or carried into effect by the other trustees or commissioners entering into the same: Provided always, that all acts, orders, matters, and things, made or done by such trustee or commissioner previously to his being convicted of any such offence, shall be good, valid, and effectual; and further provided, that nothing in this enactment contained shall extend or be deemed or construed to extend to any trustee or commissioner who shall receive any sum or sums of money paid out of the tolls of any turnpike road, as or by way of purchase money, damages, rent, recompence, or satisfaction agreed upon or awarded to such trustee or commissioner, for any lands, grounds, tenements, or hereditaments, purchased or taken for the purpose of diverting or altering, or for the use of the turnpike road for which he shall act as a trustee or commissioner, or for a repository for materials to be used thereon, or for the damage done to any inclosed or private grounds of any such trustee or commissioner, in taking materials therefrom, or in carrying or conveying them over the same, or to prevent any such trustee or commissioner from selling or disposing of, for the use of the turnpike road, any materials, or any timber grown or growing on the land or grounds of such trustee or commissioner.

For appoint-
ing new
trustees on
vacancies.

LXVI. And be it further enacted, That, when and as often as any of the trustees or commissioners, save and except the justices of the peace, appointed or to be elected and appointed under any Act of Parliament for making, repairing, or maintaining any turnpike road,

whether the average balance in the hands of the clerk was such that a man might reasonably be expected to make a profit: *De-lane v. Hilcoat*, 9 B. & C. 310. See *Rex v. Patteson*, 4 B. & Ad. 9, as to how far one office is void by accepting another incompatible with it.

shall die, or by bankruptcy, insolvency, or otherwise, become disqualified to act, or by writing under their hands refuse to act in the execution of such Act, it shall be lawful for the surviving or remaining trustees or commissioners, from time to time, to elect and appoint one other fit person, qualified as aforesaid, to be a trustee or commissioner in the room of every trustee or commissioner dying or becoming disqualified or refusing to act as aforesaid; provided that notice of the time and place of meeting of the trustees or commissioners for every such election be given by the clerk or clerks to such trustees or commissioners, by affixing the same in writing upon all the toll-gates or turnpikes erected upon the said road for which they shall act as trustees or commissioners, and by inserting such notice in one or more of the newspapers circulating in that part of the country where such road shall pass, fourteen days at least before every such meeting; and every person who shall be elected and appointed a trustee or commissioner pursuant to the directions of this Act, shall and may act with the surviving and remaining trustees or commissioners in the execution of such Act, to all intents and purposes, as if he had been therein named and appointed a trustee or commissioner.

NEW
TRUSTEES.

Notice to be
given four-
teen days be-
fore the
meeting.

LXVII. And be it further enacted, That the said trustees or commissioners shall and may from time to time meet at such time and place, on or near their respective roads, as to them shall seem convenient, and may adjourn themselves, to meet at any place or places, and at such time or times as the said trustees or commissioners, or the major part of them present at any meeting, shall appoint; and at all their several meetings the trustees or commissioners shall pay and defray their own expenses, except any sum not exceeding ten shillings per diem for the use of the room wherein they shall meet; and all orders and determinations of the trustees or commissioners in the execution of any such Act, shall be made at meetings to be held in pursuance thereof, and not otherwise (except in the cases hereby otherwise particularly provided for), and that no order or determination shall be made unless the major part of the trustees or commissioners present shall concur therein; and that all acts, orders, and proceedings relating to any such Act, which are directed to be had, made, done, or exercised by or before the said trustees or commissioners, and all the powers and authorities hereby in them vested generally, shall and may be had, made, done, and exercised by the major part of

Meetings of
trustees.

[Repealed by
4 G. 4, c. 95,
s. 38, infra.]

MEETINGS.

No order to be revoked, unless twenty-one days' notice be given, and seven trustees concur.

Meetings may be held on emergencies.

[*Repealed by* 4 G. 4, c. 95, s. 40.]

General annual meetings to be held.

the trustees or commissioners who shall be present at the respective meetings to be held by virtue of any such Act, the whole number present not being less than three (except in such cases where any other number is by any local Act or this Act named for any particular or special purpose); and that all acts, orders, or proceedings had, made, or done by or before such three trustees or commissioners, shall have the same force and effect, and be binding and conclusive on all persons and to all intents and purposes whatsoever, as fully and effectually as if the same were had, made, done, or executed by or before all the said trustees or commissioners; and that a chairman shall and may in the first place be appointed at every meeting to be held by virtue and for the purposes of this Act, who, in case of an equal number of votes (including the chairman's vote), shall have the casting or decisive vote; and that no order or determination at any meeting of the said trustees or commissioners once made, agreed upon, or entered into, shall be revoked or altered at any subsequent meeting, unless notice of the intention to make such revocation or alteration shall have been given at a previous meeting holden for the same road, and entered in the book of proceedings of such meeting, and also by affixing such notice, signed by any two or more trustees or commissioners, on all the turnpike gates then erected upon such road, twenty-one days at least before such meeting, nor unless such revocation or alteration shall be agreed to be made by seven trustees or commissioners at the least.

LXVIII. And be it further enacted, That, if at any time it shall be thought necessary, for the better execution of any Act of Parliament for making, repairing, or maintaining any turnpike road, that the trustees or commissioners of such road shall meet before the time to which any meeting may be adjourned, it shall and may be lawful for any two or more of such trustees or commissioners (or for the clerk to the said trustees or commissioners, by an order in writing, signed by any two or more of them), to give notice of such earlier meeting in the manner before directed, in which notice shall be expressed the time, place, and purpose of such earlier meeting (such time not being less than fourteen days after publication of the said notice); and all the orders and determinations of the trustees or commissioners at all such meetings shall be as valid as if the same had been done at any other meeting of trustees or commissioners held by virtue of this Act, or the Act under and by virtue of which they shall act as trustees or commissioners: Provided always, that no other business than what shall be specified in such notice shall be transacted at any such meeting.

LXIX. And be it further enacted, That all trustees and commissioners of every turnpike road or roads shall and they are hereby required to hold a general meeting of the trust for which they shall respectively act, *on a day to be by them or any three or more of them appoint-*

ed, in the months of April, September, or October (l), of which meeting twenty-one days' notice shall be given, by inserting the same in some newspaper or newspapers usually circulating in the county or counties in which the road or roads, in respect whereof such meeting shall be held, lie or are situated, which said meeting shall be called or known as "the general annual meeting of the trustees or commissioners;" and at such meeting the trustees or commissioners assembled shall elect a chairman for the purposes thereof, and shall also audit their accounts, and report the state of the road or roads under their care and superintendence (m).

MEETINGS.

LXX. And be it further enacted, That, where a sufficient number of the trustees or commissioners of any turnpike road shall not meet on the day appointed by any such Act or Acts respectively, for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means, or by some or one of them, the intent of the said Act or Acts may be frustrated, in all or either of the said cases it shall be lawful for so many of the said trustees or commissioners as shall meet, or the major part of them, or in case no such trustee or commissioner shall be present, for their clerk or clerks, to cause notice in writing to be affixed on all the turnpike gates which shall be then erected on the said respective roads, or if no turnpike gates shall then be erected, to cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired do lie, and also in some public newspaper circulated in the county in which the road shall be situate, at least ten days before the intended meeting, appointing such trustees or commissioners to meet at such place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees or commissioners, if no such preceding meeting shall have been held; and the said trustees or commissioners, when met in pursuance of such notice, shall and

If a sufficient number of trustees or commissioners do not attend, another meeting shall be appointed, of which ten days' notice shall be given.

[Repealed by 3 & 4 Viet. c. 39, s. 1, and new provisions made by sect. 2.]

(l) Where a local Act fixed a different time for the annual meeting than the time here mentioned, the 4 G. 4, c. 95, s. 42, authorised it to be held at such time, notwithstanding this enactment. But now, by 3 & 4 W. 4, c. 80, s. 2, the general annual meeting is to be on or before 25th March, and not at any other time.

(m) See further, regulations respecting meetings, 4 G. 4, c. 95, ss. 39—41; 3 & 4 W. 4, c. 80, s. 2, &c.

TREASURER AND CLERK. may and they are hereby required to proceed and carry such Act or Acts into execution, in the same and in as ample and full a manner, to all intents and purposes, as they might or could have done if no such neglect had happened.

Office of treasurer and clerk to be kept separate. LXXI. And be it further enacted, That it shall not hereafter be lawful for any trustees or commissioners to continue or appoint the person who has been or may be appointed to act as their clerk in the execution of any Act or Acts of Parliament for repairing and maintaining any turnpike road, or the partner of any such clerk, to be or to hold the offices of clerk and treasurer for the purposes of such Act or Acts, or to continue or appoint the person who has been or may be appointed treasurer, or the partner of any such treasurer, to be the treasurer and clerk for the purposes of such Act or Acts; and if any person shall act in both the capacities of clerk and treasurer, or if any person being the partner of any such clerk shall act as treasurer, or being the partner of such treasurer shall act as clerk in the execution of this or any other act, every person shall, for every such offence, forfeit and pay the sum of fifty pounds to any person or persons who shall sue for the same, to be recovered, with full costs of suit, in any of his Majesty's courts of record at Westminster, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed (n).

Penalty 50l.

Orders and proceedings to be entered in books, which shall be open for inspection.

LXXII. And be it further enacted, That all orders and proceedings of the trustees or commissioners of every turnpike road, together with the names of the trustees or commissioners present at every meeting, shall be entered in a book or books to be kept by the clerk to the said trustees or commissioners for that purpose, and be signed by the chairman of the meeting or meetings at which such orders or proceedings shall be from time to time made or had(o); and that such book or books shall be open at all seasonable times to the inspection of any of the trustees or commissioners, without fee or reward; and such orders and proceedings, so entered and signed by the chairman of such meeting or

(n) This section is not repealed, but it is re-enacted, with additional restrictions and an increased penalty, by 7 & 8 G. 4, c. 24, s. 4.

(o) See *Southampton Dock Co. v. Richards*, 1 M. & Gr. 448; *London and Brighton Railway Co. v. Fairclough*, 2 M. & Gr. 674.

meetings as aforesaid, shall be deemed and taken to be ^{PROCEEDINGS.} original orders and proceedings; which said book or ^{Books to be} books, as well as the book or books in which the oath ^{evidence.} or affirmation directed to be taken by the said trustees or commissioners shall be entered, and also the book or books directed to be kept for registering mortgages and assignments, and all entries in such books respectively, shall and may be read in evidence in all courts whatsoever, in all cases of appeal, and in all prosecutions, suits, and actions whatsoever(*p*).

LXXIII. And be it further enacted, That the trustees and commissioners of every turnpike road shall, and they are hereby required, from time to time and at all times, to order and direct a book or books to be provided and kept by their clerk for the time being; in which book or books such clerk shall enter, or cause to be entered, true and regular accounts of all sums of money received, paid, laid out, and expended for or on account of the road for which such clerk shall act, and of the several articles, matters, and things for which such sums of money shall have been disbursed, laid out, and paid; and such book or books shall at all seasonable times be open to the inspection of the said trustees or commissioners, or any creditor or creditors(*q*) on the tolls ^{Books of account to be kept, and to be open to the inspection of trustees and creditors.}

(*p*) See *Sheffield, Ashton, &c. Railway Co. v. Woodcock*, 7 M. & W. 574. This provision is extended by 9 G. 4, c. 77, s. 2, to books kept under Acts which have expired or been repealed, &c. See further as to evidence, 3 G. 4, c. 126, ss. 59, 64, 134, 137; 4 G. 4, c. 95, s. 84.

(*q*) The Court refused a mandamus to compel trustees to produce the accounts to any but a creditor or trustee, notwithstanding a clause in the local Act (passed previously to the general Act) directing that all persons should have access to the entries; holding that the above general provisions superseded the local Act in this respect: *Rex v. Northleach and Witney Road Trustees*, 5 B. & Ad. 978. As to what is a sufficient refusal of inspection, to ground an application for a mandamus, see *Rex v. Wilts and Berks Canal Co.*, 3 Ad. & E. 477. The taking out a summons

PROCEEDINGS. collected and taken on the road to which such books relate, without fee or reward; and the said trustees or commissioners and creditors, or any of them, shall or may take copies of or extracts from the said book or books, or any part or parts thereof, without paying any thing for the same; and the said book or books shall be produced by the said clerk at all meetings of the said trustees or commissioners; and in case any clerk shall refuse to permit, or shall not permit any of the said trustees or commissioners, or any such creditor, to inspect any such book or books, or to take such copies or extracts as aforesaid, or in case such clerk shall refuse or neglect to produce such book or books at any meeting of the said trustees or commissioners, such clerk shall forfeit and pay any sum of money not exceeding five pounds, to be levied and applied in the same manner as other penalties are hereby directed to be levied and applied (*r*).

Penalty not exceeding 5*l*. on clerk for refusing inspection, &c.

Trustees may sue and be sued in the name of their clerk, &c.

LXXIV. And be it further enacted, That the trustees and commissioners of every turnpike road may sue and be sued in the name or names of any one of such trustees or commissioners, or of their clerk or clerks for the time being (*s*), and that no action or suit to be brought or

for inspection before a judge seems to be a sufficient demand of inspection: *Birmingham, Bristol, and Cheltenham Railway Co. v. White*, 1 Q. B. 282.

(*r*) See sect. 141, &c. This provision is extended by 9 G. 4, c. 77, s. 2, to books kept under local Acts which have expired or been repealed, &c.

Actions.

(*s*) Upon the construction of this section, see the case of *Wormwell v. Hailstone*, 6 Bing. 668. See also *Pigott v. Thompson*, 3 B. & P. 147; *Everett v. Cooch*, 7 Taunt. 1; *Sutton v. Clarke*, 1 Marsh. 429, 6 Taunt. 29; *Frost v. Bolland*, 8 D. & R. 384, 5 B. & C. 611, Appendix, post; *Curling v. Johnson*, 10 Bing. 89; *Rex v. St. Catherine Dock Company*, 4 B. & Ad. 360; *Reg. v. Victoria Park Company*, 1 Q. B. 288. See also sect. 60, ante, p. 49; 7 G. 4, c. 64, s. 17, giving power to trustees to sue for injuries done to road property; sect. 133, post, giving them power to direct prosecutions for nuisances, &c.; and 4 G. 4, c. 95, s. 78, relating to suits by

commenced by or against any trustees or commissioners of any turnpike road by virtue of this or any other Act or Acts of Parliament, in the name or names of any one of such trustees or commissioners, or their clerk or clerks, shall abate or be discontinued by the death or removal of such trustee, commissioner, clerk or clerks, or any of them, or by the act of such trustee, commissioner, clerk or clerks, or any of them, without the consent of the said trustees or commissioners; but that any one of such trustees or commissioners, or the clerk or clerks for the time being to the said trustees or commissioners, shall always be deemed to be the plaintiff or plaintiffs, defendant or defendants (as the case may be), in every such action or suit: Provided always, that every such trustee, commissioner, clerk or clerks, shall be reimbursed and paid out of the monies belonging to the turnpike road for which he or they shall act, all such costs, charges, and expenses as he or they shall be put unto, or become chargeable with or liable to, by reason of his or their being so made plaintiff or plaintiffs, defendant or defendants (t).

ACTIONS, &c.

LXXV. And be it further enacted, That no person shall be capable of holding any place of profit under any trustees or commissioners of any turnpike road, who shall sell any wine, ale, spirituous liquors, or provisions by retail.

Victuallers not to hold places of profit.

LXXVI. Provided always, and be it further enacted, That the trustees and commissioners of every turnpike road shall and they are hereby required to take sufficient security from every treasurer to be appointed by them for the purposes of any Act or Acts of Parliament for making, repairing or maintaining any turnpike road, for the due and faithful execution of his office, before such treasurer shall enter upon his office; and if they shall so think proper, shall and may also take such se-

Treasurer to give security.

Security may be taken from any other officer.

trustees on contracts for amending, &c., the roads. As to the costs of proceeding against trustees, see 4 G. 4, c. 95, s. 61; as to their personal liability for torts, see 7 & 8 G. 4, c. 24, s. 2, and the cases there cited; and 4 G. 4, c. 95, s. 61.

(t) See *Rex v. Kingston*, 8 East, 41.

OFFICERS, &c. security from any other officer (*u*) to be appointed under or by virtue of this or such other Act (*x*).

Officers to account when required.

[*Repealed* by 4 G. 4, c. 95, s. 46.]

On complaint to a justice, of officer's neglecting to render account, or not producing vouchers, or refusing to deliver up books, such justice may cause any balance due to be levied on the goods of the defaulter.

LXXVII. And be it further enacted, That all such officers as shall be appointed by any commissioners or trustees of any turnpike road, shall, as often as required by the commissioners or trustees, render and give to them, or to such person or persons as they shall for that purpose appoint, a true, exact, and perfect account in writing, under their respective hands, with the proper vouchers, of all monies which they shall respectively, to the time of rendering such accounts, have received, paid, and disbursed by virtue of this or any other Act, or for or on account or by reason of their respective offices; and in case any money so received by any such officer shall remain in his hands, the same shall be paid to the trustees or commissioners, or to such person or persons as they shall, in writing under their hands, authorise and empower to receive the same; and if any such officer shall refuse or wilfully neglect to render and give such account, or to produce and deliver up such vouchers, or shall for the space of fourteen days after being thereunto required by the said trustees or commissioners, or any three or more of them, refuse or neglect to render and give up to them, or to such person or persons as they shall direct or appoint, all books, papers, writings, tools, matters, and things, in his hands, custody, or power, relating to the road for which he shall act, or which he shall have disposed of without the consent and approbation of the trustees or commissioners, then it shall be lawful for any justice of the peace for the county where the officer so making default shall be or reside, upon application made to him for that purpose, by or on behalf of the trustees or commissioners, to make inquiry of and concerning any such default as aforesaid, in a summary way, as well by the confession of the party as by the testimony of any credible witness or witnesses upon oath, without fee or reward, and by warrant under his hand and seal to cause such money as shall appear to him to be due and unpaid, to be levied by distress and sale of the goods and chattels of such officer, rendering to

(*u*) See Form of Bond, Schedule, No. 16. It would seem that the giving security is not a condition precedent to a person's becoming treasurer, or being responsible or accountable, but that the appointment is complete without such security being given: *Rex v. Patteson*, 4 B. & Ad. 9.

(*x*) As to the appointment and liability of officers in general, see 4 G. 4, c. 95, s. 43; 9 G. 4, c. 77, ss. 14, 15; and sect. 136 of this Act, and the cases there cited. As to the treasurer and clerk not being the same person, see sect. 71, ante, and 7 & 8 G. 4, c. 24, s. 4; and as to when the treasurer's goods may be levied for damages, see 4 G. 4, c. 95, s. 71: *Wormwell v. Hailstone*, 6 Bing. 668.

him the overplus (if any) on demand, after payment of the money remaining due, and deducting the charges and expenses of making such distress and sale; and if sufficient distress cannot be found, or if it shall appear to any such justice in manner aforesaid, that any such officer shall have refused, or wilfully neglected to give such account, or to deliver up all books, papers, writings, tools, matters and things in his custody or power, relating to the execution of his office, such justice shall commit him to the house of correction or common gaol of the county where such offender shall be or reside, there to remain without bail or main-prize until he shall make and give a true and perfect account, and verify the same in manner aforesaid, and shall produce and deliver up the vouchers relating thereto, and shall have paid the money (if any) remaining in his hands as aforesaid, according to the direction of the trustees or commissioners, or shall have compounded with the said trustees or commissioners for such money, and paid such composition according to their direction, which composition all trustees and commissioners are hereby empowered to make and receive, or until he shall deliver up such books, papers, and writings, tools, matters, and things as aforesaid, or have given satisfaction to the trustees or commissioners concerning the same; but no such officer who shall be committed on account of his not having sufficient goods and chattels as aforesaid, shall be detained in prison by virtue of this Act for any longer time than six calendar months.

LXXVIII. And be it further enacted, That the trustees or commissioners of every turnpike road shall and they are hereby required, at their general annual meeting in each year (*y*), to examine, audit, and settle the accounts of the respective treasurers, clerks, and surveyors appointed by them, and to require such treasurers, clerks, and surveyors to produce their books, accounts, papers, and vouchers, and to examine into the revenues and debts, distinguishing bond from simple contract debts, of the several roads for which they shall act as treasurer, clerk, or surveyor; and when the accounts of the said several treasurers, clerks, and surveyors shall be settled and allowed by the trustees or commissioners present at such meeting, the same shall be signed by the chairman of such meeting; and if any

officers, &c.

For auditing accounts of treasurers, clerks, and surveyors, at the general annual meeting.

Treasurer,

(*y*) This provision is altered by 3 & 4 W. 4, c. 80, which requires the accounts to be made up annually for the year ending 31st December, and copies to be transmitted to the Secretary of State, &c.

ACCOUNTS, &c. treasurer, clerk, or surveyor shall refuse or neglect to produce his accounts, or any book, paper, or voucher required to be produced by him, such treasurer, clerk, or surveyor shall be dealt with according to the provisions hereinbefore contained with regard to officers refusing to account or deliver up books or papers, or pay

Statement of the revenue and expenditure to be made out according to the form in Schedule annexed, and, being approved, shall be transmitted to the clerk of the peace. over money in their hands (z); and when and as soon as the said accounts of the said respective treasurers, clerks, and surveyors, shall be audited, allowed, and signed, the clerk to the trustees or commissioners holding such meeting shall forthwith make out a statement of the debts, revenues, and expenditure received or incurred on account of the trust for which the meeting shall be held, in the form contained in the Schedule (a) to this Act annexed; which said statement shall be submitted to the trustees or commissioners assembled at such meeting, and when approved by the majority of them, shall be signed by the chairman of the said meeting; and the said statement, being so approved and signed, the said clerk shall, within thirty days thereafter, transmit the same to the clerk of the peace of the county in which the road, or the major part thereof, to

Penalty 50l. which the said statement relates, shall lie (b); and if any clerk shall refuse or neglect to make out such statement as aforesaid, or to transmit the same within the time hereinbefore mentioned, every clerk so offending shall for such offence forfeit and pay the sum of fifty pounds, to be recovered as hereinafter directed (c).

Clerk of the LXXIX. And be it further enacted, That the clerk

(z) The provisions here referred to are repealed, but other regulations are provided in lieu thereof, by 4 G. 4, c. 95, s. 47.

(a) See Form of General Statement in the Schedule, No. 24. See also 3 & 4 W. 4, c. 80, s. 1, &c., and the schedule to that Act.

(b) Printed copies of the statements so transmitted, produced from the clerk of the peace's office, were held, in an action against the trustees, not to be admissible without proof that the originals had been lost or destroyed: *Pardoe v. Price*, 13 M. & W. 267.

(c) By section 141, &c.

of the peace of every county to whom such statements shall be transmitted, shall, on receiving such statements, cause the same to be produced to the justices assembled at the quarter sessions to be held next after the receipt thereof, and also to be registered and kept amongst the records of the quarter sessions of the county for which such clerk of the peace shall act (*d*); and the said statements so to be transmitted to the said respective clerks of the peace shall, when registered, be open to the inspection of all and every person and persons whatsoever, who may take extracts therefrom or copies thereof, paying to the clerk of the peace in whose custody the same shall be, the sum of five shillings for each inspection, and the sum of sixpence for every seventy-two words of each extract or copy taken.

ACCOUNTS.

peace to register such statements, and produce them to the quarter sessions.

Fee for inspection and copy.

LXXX. And be it further enacted, That the said trustees or commissioners shall, immediately after such accounts and statements have been examined, audited, and signed, cause a sufficient number of copies of such statements to be printed, and direct their clerk to transmit a copy thereof to each acting trustee or commissioner, having duly qualified himself to act as such trustee or commissioner of such road.

Statements to be printed and sent to trustees.

LXXXI. And be it further enacted, That it shall be lawful for the trustees or commissioners of any turnpike road to borrow and take up at interest, on the credit of the tolls arising on such road, such sum or sums of money as they shall from time to time respectively think proper, and to demise and mortgage the tolls on such road, or any part or parts thereof, and the turnpikes and toll-houses for collecting the same (the costs and charges of which mortgages shall be paid out of the tolls), as a security to any person or persons, or their trustees, who shall advance such sum or sums of money (*f*);

Power to borrow money (*e*).

(*d*) See 3 & 4 W. 4, c. 80.

(*e*) See 12 & 13 Vict. c. 87, and 13 & 14 Vict. c. 79, s. 4, as to the creation of a sinking fund for the payment of money borrowed under this Act.

(*f*) A mortgagee is not, as such, disqualified from being a trus-

MORTGAGES,
 &c.
 —

Form of
 mortgage.

which mortgages shall be in the words or to the effect following; (that is to say),

“ By virtue of an Act passed in the — year of the reign of —, intituled [*here set forth the title of this Act*]: We, whose hands and seals are hereunto subscribed and set, being — of the trustees [*or, commissioners*] for putting into execution an Act passed in the — year of the reign of —, intituled [*here set forth the title of the Act under which the trustees or commissioners borrowing the money and granting the mortgage shall act,*] in consideration of the sum of — sterling, advanced and paid by A. B. of — to the treasurer of the said trustees [*or, commissioners*] do hereby grant and assign unto the said A. B. and his executors, administrators, and assigns, such proportion of the tolls arising and to arise on the said turnpike road, and the toll-gates and toll-houses (*g*) erected or to be erected for collecting the same, as the said sum of — doth or shall bear to the whole sum now or hereafter to become due and owing on the security thereof: To have, hold, receive, and take the said proportion of the said tolls, toll-gates, toll-houses, and premises, with the appurtenances, unto the said A. B. and his executors, administrators, and assigns, for and during the residue of the term for which the said tolls are granted by the said

tee; see sect. 64, ante; and trustees are not personally liable as mortgagees, see 4 G. 4, c. 95, s. 61. See further, as to mortgages and mortgagees in possession, ss. 47, 48, ante; 4 G. 4, c. 95, s. 60; 9 G. 4, c. 77, ss. 10—13; and 13 & 14 Vict. c. 79, s. 5. Where, the clerk and solicitor to the trustees having asked for payment on account of his bill of costs for business done for them, a mortgage was given to him under this section, it was held to be valid; the transaction being equivalent to an advance of money by him: *Doe d. Jones v. Jones*, 5 Exch. 16.

(*g*) Before this Act, the trustees had no power to mortgage toll-houses, and they were not estopped from disputing the legality of such a mortgage, though executed by them: *Fairtitle v. Gilbert*, 2 T. R. 171; see *Doe d. Levy v. Horne*, 3 Q. B. 7. But see *Doe d. Baggaley v. Hares*, 4 B. & Ad. 435, 1 N. & M. 237.

last-mentioned Act, unless the said sum of — with MORTGAGES, &c.
 interest after the rate of — per centum per annum,
 shall be sooner repaid and satisfied. Given under our
 hands this — day of —.

And copies of all such mortgages shall be entered in a book or books to be kept for that purpose by the clerk or treasurer to the said trustees or commissioners, for which entry such clerk shall be paid the sum of five shillings and no more, out of the tolls payable on such road, and which said book or books shall and may at all seasonable times be perused and inspected without fee or reward; and it shall be lawful for all persons respectively, to Mortgages may be assigned.
 whom any mortgage shall be made as aforesaid, or who shall be from time to time entitled to the money thereby secured, to assign or transfer his, her, or their right, title, and interest in and to such mortgage, and the principal money and interest thereby secured, to any other person or persons whomsoever; which assignment or transfer may be made in the following words, or words to the like effect, to be indorsed on such mortgage security, or to be underwritten or thereunto annexed, and signed in the presence of, and attested by one or more credible witness or witnesses; (that is to say),

“I, A. B. [*or* I, C. D., assignee, executor, or administrator of A. B., *as the case may happen*], do hereby Form of assignment.
 assign and transfer this mortgage security, with all my right and title to the principal money thereby secured, and all interest now due and hereafter to grow due upon the same, unto E. F., his or her executors, administrators, and assigns. Dated this — day of —, one thousand eight hundred and —.

“Witness G. H. (Signed) A. B. *or* C. D.”

Which transfer shall be produced and notified to the clerk or treasurer of the said trustees or commissioners, within two calendar months next after the day of the date thereof, who shall enter the same in the said book or books, for which entry the said clerk or treasurer shall be paid the sum of five shillings and no more; and

MORTGAGES,
&c.

such transfer shall then (*h*) entitle such assignee, his executors, administrators, and assigns, to the full benefit of such mortgage security; and every such assignee may, in like manner, assign or transfer the same, and so toties quoties; and it shall not be in the power of any person or persons (except the person or persons to whom the same shall be last transferred, his, her, or their respective executors or administrators) (*i*), to release, discharge, or make void the original mortgage security, or the monies due thereon, or any part thereof; and all persons to whom any such mortgage or transfer shall be made as aforesaid, shall, in proportion to the sum or sums of money thereby secured, be creditors (*k*) on the tolls by such Act granted, and on the

(*h*) The transferee of a mortgage of tolls, in the general form given by this section, has *no title* until the transfer has been produced and notified to the clerk or treasurer, and entered by him in a proper book kept by him: *Doe d. Jones v. Jones*, 5 Exch. 16. Where the trustees for managing the turnpike roads of a district hold meetings at several places in the district, and appoint separate clerks at each place, who keep separate books, it is enough for the clerk at one of those places to enter the mortgage in his book at that place, although it includes the whole tolls of the district, and although he be himself the mortgagee: *Ib.* If the transfer be prepared by the clerk, that is a sufficient notification of it: *Ib.*

(*i*) As to when a probate is necessary to enable an executor to receive dividends, &c., see *Ex parte Horne*, 7 B. & C. 632. See also *Rex v. Worcester Canal Company*, 1 Man. & R. 29.

(*k*) See sect. 43, ante, p. 35, prohibiting the trustees from reducing or advancing the tolls without the consent of four-fifths in value of the creditors. And see 4 G. 4, c. 95, s. 60; 9 G. 4, c. 77, ss. 10—13.

A mortgagee of turnpike tolls cannot, merely by virtue of his mortgage, sue the trustees for money had and received, to recover arrears of interest due on the money advanced by him. There is no enactment in any of the statutes which makes it obligatory on the trustees, while they remain in possession of the tolls, to set apart at any particular time any portion of the money received by them, towards keeping down the interest on the mortgages; they may

said toll-gates and toll-houses, in equal degree one with another, or in such order as shall be agreed upon and stipulated by the said trustees or commissioners at the time of the advance of their respective shares.

SUBSCRIPTIONS.

LXXXII. And be it further enacted, That if any person or persons shall agree to advance any sum or sums of money to be employed in the making or repairing of any turnpike road, or highway intended to be made turnpike, and shall subscribe his, her, or their name or names to any writing for that purpose, every such person shall be liable to pay every such sum or sums of money so subscribed, according to the purport of such writing; and in default of payment thereof within twenty-one days after the same shall become payable according to the purport of such writing, and shall be demanded by the person to whom the same is made payable by such writing, or if no person be named therein for that purpose by the treasurer of such turnpike or intended turnpike road, it shall and may be lawful, for every such treasurer or other person to sue for and recover the same in any of his Majesty's courts of record, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed.

Enforcing the payment of money subscribed. [Repealed by 9 G. 4, c. 77, s. 6.]

LXXXIII. And be it further enacted, That it shall be lawful for the trustees or commissioners of every turnpike road, and they are hereby fully authorised and empowered, from time to time, to make, divert, shorten, vary, alter, and improve the course or path of any of the several and respective roads under their care and management, or of any part or parts thereof, and to divert, shorten, vary, alter, and improve the course or path of any of the said several and respective roads, through or over any commons or waste grounds, or uncultivated lands, without making satisfaction for the same, and also through or over any private lands, tenements, or hereditaments, tendering and making satisfaction to the owners thereof, and persons interested therein, for the damage they shall sustain thereby; and it shall and may be law-

Powers for making and improving the roads.

[Repealed as to making, diverting, shortening, and varying roads, by 9 G. 4, c. 77, s. 8.]

expend it on the further improvement of the road; and the creditors have no legal right given them by any of the statutes to any part of it. The creditor's only remedy seems to be by enforcing his rights as mortgagee in equity, or by determining, by action of ejectment, the possession of the tolls by the trustees, and so repaying himself his principal and interest: *Pardoe v. Price*, 13 M. & W. 281, 16 M. & W. 451. See 13 & 14 Vict. c. 79, s. 5.

Turnpike tolls are not within the Statute of Limitations, 3 & 4 W. 4, c. 27; and therefore more than six years' arrears of interest may be recovered on a mortgage of them: *Mellish v. Brooks*, 3 Beav. 22.

**PURCHASES
FOR MAKING
ROADS.**

ful for the said trustees or commissioners, and for their surveyor or surveyors and workmen, with or without carriages or cattle, from time to time, to enter upon any such commons or waste grounds, or uncultivated lands, private lands, tenements, or hereditaments as aforesaid, through or over which the said road, or the widenings and alterations thereof, pass, or are intended to pass, and to stake out and make the same in such manner as the said trustees or commissioners shall think necessary or proper, without being thereby subject or liable to be deemed a trespasser or trespassers, or to any fine, penalty, or forfeiture for entering or continuing upon any part or parts of such lands, tenements, and hereditaments respectively, for any of the purposes aforesaid (*l*).

Lands may
be purchased
for improv-
ing the road.

LXXXIV. And be it further enacted, That it shall be lawful for the trustees or commissioners of any turnpike road to treat, contract, and agree with the owners of and persons interested in any lands, tenements, hereditaments, and premises, with their appurtenances, which they shall deem necessary to purchase for the purpose of widening, diverting, altering, and improving such road, for the purchase thereof, and for the loss or damage such owners or persons may otherwise sustain(*m*); and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of the person or persons entitled in reversion, remainder, or expectancy after them, and for and on behalf of their cestui que trusts, whether femmes covert, infants, or issue unborn, lunatics, idiots, or other person or persons whomsoever, and to and for all femmes covert who are or shall be seised of or interested in their own right, and to and for all and every person and per-

Bodies poli-
tic, &c., and
incapacitat-
ed persons,
empowered
to sell.

(*l*) General powers are given to the trustees for making and improving the roads, by 9 G. 4, c. 77, s. 9, in lieu of the powers here repealed. And see note on that section.

(*m*) As to the time within which actions must be brought respecting lands taken for the road, see *Lord Oakley v. Kensington Canal Company*, 5 B. & Ad. 138.

sons whomsoever, who are or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage as aforesaid, to contract with the said trustees or commissioners for the sale thereof, or for the satisfaction to be made for the same, or for such damages as aforesaid; and by conveyance (*n*), lease and release, or bargain and sale, to sell and convey unto the said trustees or commissioners all or any such lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid (*o*); and all contracts, sales, and conveyances which shall be so made shall be good, valid, and effectual to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons, shall be and are here-

ASSESSING
COMPENSA-
TION.
—

Contracts
binding.

(*n*) As to the Form of Conveyance, see Appendix, No. 49, and note thereon.

(*o*) Under a local Act, the trustees of a turnpike road had agreed to exchange a portion of old road for land required to form part of a new road, pursuant to 3 G. 4, c. 126. The new road having been formed, and an order having been made for stopping up the old as unnecessary, the trustees, by the same order, gave up the portion of old road according to agreement. The Court held, that the public had acquired a complete right in the new road, and that the land given in exchange was vested in the person who had agreed for it, without any conveyance having been executed on either side. The clause in section 84, directing a conveyance, does not apply where the vendors are persons sui juris, and acting in their own right: *Allnutt v. Pott*, 1 B. & Ad. 302, 3 Man. & R. 439. See Form of the Trustees' Order in this case, Appendix, No. 49. If the property is in mortgage, see 7 & 8 G. 4, c. 24, s. 7.

ASSESSING
COMPENSA-
TION.

When persons interested neglect or refuse to treat, the value may be ascertained by a jury.

by indemnified for what they or any of them shall do by virtue or in pursuance of this Act (*p*).

LXXXV. And be it further enacted, That if any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, or any other person or persons interested in any such lands, tenements, hereditaments, or premises, or sustaining any damage as aforesaid, upon notice to him, her, or them given, or left in writing (*q*) at the dwelling-house or dwelling-houses, place or places of abode of such person or persons, or of the principal officer or officers of any such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or at the house of the tenant in possession of any such lands, tenements, hereditaments, or premises, shall, for the space of thirty days next after such notice given or left as aforesaid, neglect or refuse to treat, or shall not agree in the premises, or by reason of absence shall be prevented from treating, then and in every such case the said trustees or commissioners shall cause such damage, value, or recompence to be inquired into and ascertained by a jury of twelve indifferent men of the county, riding, or place wherein such lands, tenements, hereditaments, or premises do lie;

(*p*) See Form of the Trustees' Order for Purchasing Land, Schedule, No. 44.

(*q*) This notice is essential, and must appear on the face of the proceedings to have been given; without it, the trustees have no jurisdiction: *Rex v. Bagshaw*, 7 T. R. 363; *Rex v. Norwich and Watton Road Trustees*, 5 Ad. & E. 563. As to the sufficiency of the notice, see *Sims v. Commercial Railway Company*, 1 Railw. Cas. 451. As to the requisites of the inquisition, see *Rex v. South Holland Drainage Committee*, 8 Ad. & E. 429; *Reg. v. Swansea Harbour Trustees*, Id. 439; *Doe v. Bristol and Exeter Railway Company*, 6 M. & W. 320; *Taylor v. Clemson*, 2 Q. B. 978; *Reg. v. Manchester and Leeds Railway Company*, 8 Ad. & E. 413; *Manning v. Eastern Counties Railway Company*, 12 M. & W. 237. See Form of Notice, Appendix, No. 45.

and in order thereto, the said trustees or commissioners are hereby empowered and required from time to time, as occasion shall require, to summon and call before such jury, and examine upon *oath*(*r*) all and every person and persons whomsoever who shall be thought necessary and proper to be examined concerning the premises (which oath the said trustees or commissioners, or any or either of them, are and is hereby empowered to administer); and such trustees or commissioners shall, by ordering a view or otherwise, use all lawful ways and means, as well for their own as for the said jury's information in the premises(*s*); and after the said jury shall have inquired of and assessed such damage and recompence, they the said trustees or commissioners shall thereupon order(*t*) the sum or sums of money so assessed by the said jury to be paid to the said owners or other persons interested(*u*), according to the verdict or inquisition of such jury(*x*); and such verdict or inquisition, and judgment, order, and determination thereon, shall be final, binding, and conclusive to all intents and purposes against all parties and per-

ASSESSING
COMPENSA-
TION.
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(*r*) Unless the jury, when sworn, can be considered to constitute a court of justice within the meaning of 5 & 6 W. 4, c. 62, s. 7, the evidence must now be by declaration, in the form prescribed by that Act.

(*s*) In estimating the damages, *Grose, J.*, observed, "the jury must be taken to give as much as will, besides the value of the land, indemnify the party for the expense of keeping up the fences between the road and the inclosure: *Rex v. Llandilo Commissioners*, 2 T. R. 233-4. And see *Rex v. Yorkshire W. R. Justices*, 3 N. & M. 685, as to assessing compensation for prospective damage. The interests of the several parties who have several interests must be apportioned by the jury: *Rex v. Norwich and Watton Road Trustees*, 5 Ad. & E. 563.

(*t*) The making of the order is a ministerial act, which the trustees or commissioners are bound to perform: *Rex v. Norwich and Watton Road Trustees*, 5 A. & E. 563.

(*u*) If the property is in mortgage, see 7 & 8 G. 4, c. 24, s. 7.

(*x*) See Form of Inquisition, Appendix, No. 48.

ASSESSING
COMPENSA-
TION.

sons whomsoever, claiming or to claim any estate in possession, reversion, or otherwise, their heirs and successors, as well absent as present, infants, femmes covert, idiots, lunatics, and persons under any other disability whatsoever, bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, as well as all and every person and persons whomsoever^(y); and for summoning and returning such juries, the said trustees or commissioners are hereby empowered to issue their warrant or warrants^(z) in writing to the sheriff of the county wherein such lands, tenements, hereditaments, or premises do lie, commanding him to impanel, summon, and return an indifferent jury of twenty-four persons, qualified to serve upon juries, to appear before such trustees or commissioners at such time and place as in such warrant or warrants shall be appointed; and such sheriff, or his deputy or deputies, is and are hereby required to impanel, summon, and return such number of persons accordingly; and out of the persons so impanelled, summoned, and returned, or out of such of them as shall appear upon such summons, the said trustees or commissioners shall and are hereby empowered and required to swear or cause to be sworn twelve men, who shall be a jury for the purposes aforesaid; and in default of a sufficient number of jurymen, the said sheriff, or his deputy or deputies, shall return other honest and indifferent men of the standers-by, or that can be speedily procured to attend that service, to the number of twelve; and all persons concerned shall have their lawful challenges against the said jurymen when they come to be sworn, but shall not challenge the array; and the said trustees or commissioners acting in the premises shall have power, from time to time, to impose any reasonable fine or fines upon such sheriff, his deputy or deputies, bailiff or bailiffs,

Fines may be imposed on sheriffs, &c., making default in the premises.

(y) See *Rex v. Sheppard*, 3 B. & Ald. 414; *Reg. v. Eastern Counties Railway Co.*, 2 Dowl. N. S. 945, 3 Railw. Cas. 466; *Chabot v. Lord Morpeth*, 15 Q. B. 446; *East and West India Docks &c. Co. v. Gattke*, 3 Mac. & G. 155.

(z) See Form of Precept, Appendix, No. 46.

agent or agents, making default in the premises, and on any of the persons that shall be summoned (a) and returned on such jury, and who, without sufficient excuse, shall not appear, or appearing shall refuse to be sworn on the said jury, or being sworn shall refuse to give or shall not give their verdict, or in any other manner wilfully neglect their duty therein, contrary to the true intent and meaning of this Act, and on any of the persons who, being required to give evidence before the said jury, shall, without sufficient excuse, refuse or neglect to appear, or appearing shall refuse to be sworn and examined, or to give evidence, so that no one fine be more than ten pounds on any such sheriff, deputy, bailiff, or agent, nor more than five pounds on any other person for one offence.

ASSESSING
COMPENSA-
TION.
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LXXXVI. And be it further enacted, That every sum of money or recompence to be agreed for or assessed as aforesaid, shall be paid out of any monies in the hands of the said trustees or commissioners, or out of the tolls granted by the Act for making and repairing such turnpike road, or out of the monies to be borrowed on the credit thereof, to the party or parties, or person or persons respectively entitled thereto, or to their agents, or into the Bank of England (b), in manner by this Act directed (as the case may be); and upon such payment to such parties or persons, or their agents, or into the Bank of England, and after thirty days' notice thereof given to such parties or persons, or to their agents, or left at their respective usual places of abode, or with the tenant or tenants in possession of such lands, tenements, hereditaments, and premises, then such lands, tenements, hereditaments, and premises respectively shall be vested in such trustees or commissioners, and shall and may be taken and used for the purposes of such Act; and such lands, and the site of such lands, tenements, hereditaments, and premises,

Money as-
sessed for
lands, &c., to
be paid by
the trustees
and tender
to the parties
entitled
thereto, or
paid into the
Bank, upon
which the
premises
shall vest in
the trustees.

(a) See Form of Summons, Appendix, No. 47.

(b) This part of the provision is repealed, and others enacted, by 7 & 8 G. 4, c. 24, ss. 9, 10, 11, &c.

SELLING OLD
ROADS.

After new
road is com-
pleted, the
old road may
be sold.

Conveyances
executed by
the trustees,
and enrolled
in the office
of the clerk
of the peace,
to be valid.

shall be laid into and made part of the road, in such manner as the said trustees or commissioners shall direct, and shall be repaired and kept in repair by such trustees or commissioners by the same ways and means as any other part of the road under their management is or ought to be kept in repair; and all parties and persons whomsoever shall be divested of all right and title to such lands, tenements, and hereditaments; and after such new road shall be completed, the lands or grounds constituting any former roads or road, or so much and such part or parts thereof as in the judgment of the said trustees or commissioners may thereby become useless or unnecessary, or shall or may be stopped up and discontinued as public highways (unless leading over some moor, heath, common, uncultivated land, or waste ground, or to some church, mill, village, town or place, lands or tenements, to which such new road or roads doth not or do not immediately lead, and which may therefore be *deemed proper(c)* to be kept open either as a public or private way or ways, for the use of any inhabitant at large, or any individual or individuals), *and shall be vested in, and shall and may be sold and conveyed* by the said trustees or commissioners, in the manner herein mentioned, for the best price that can be gotten for the same, and the money arising by such sale shall be applied for the purposes of the Act for repairing and maintaining such turnpike road; and all conveyances, being executed by the said trustees or commissioners, and enrolled in the office of the clerk of the peace for the county, city, or place wherein such road shall be situate, shall be good and effectual in the

(c) This part of the clause does not take away the power to stop up a road leading to some church, &c., but authorises the trustees to leave open roads of that description, when, *in their discretion*, they shall think fit; *De Beauvoir v. Welch*, 7 B. & C. 266, 1 Man. & R. 81. It was observed in that case, that the trustees had “even the remarkable power of converting a public into a private way.”

law to all intents and purposes whatsoever (*d*); or it shall be lawful for the said trustees or commissioners, SELLING OLD ROADS. instead of making such sale as aforesaid, to give up to the owners or proprietors of any adjoining lands, tene-

(*d*) See the Form of Conveyance, 4 G. 4, c. 95, s. 55; and see Stopping up roads. s. 88 of this Act, p. 81. At the common law, there can be no destruction of the public right; a highway must always continue to be a highway. The case of *Fowler v. Sanders*, Cro. Jac. 446, fully proves that it cannot be narrowed, neither can it be inclosed. The people have no ability to consent to a relinquishment of any of their rights, except by the agency of their representatives in parliament. But although by the common law a public way cannot be destroyed, yet it may be changed from its old course into some other, provided it be equally advantageous to the passengers. The legislature, however, has supplied the deficiency of the common law in this respect, by enactments which permit the extinction of highways, under such restrictions as are deemed sufficient to prevent too great an infringement upon the public rights. But in order to carry these provisions into effect, the regulations of the Act must be strictly complied with. See *Well-beloved on Highways*, p. 271; *Rex v. Bagshaw*, 7 T. R. 363; ante, p. 74; *Harber v. Rand*, 9 Price, 58. The soil of a turnpike road has been held to be not vested in the trustees, so as to enable them to consent to the diversion of another way into their road, without an express provision for that purpose: *Davison v. Gill*, 1 East, 69; but for the purpose of effecting the sale directed by the general turnpike laws, it seems that the legislature has expressly vested the soil and inheritance in the trustees; and the Courts have sanctioned proceedings under this statute. See *De Beauvoir v. Welch*, *Alnutt v. Pott*, cited in pp. 73, 78. In the diversion of turnpike roads, as in other instances, the trustees are not liable to an action for any consequential injury resulting from an act which they are authorised to do, unless they are guilty of careless and negligent, or wanton and oppressive conduct: *Boulton v. Crowther*, 2 B. & C. 703. See Appendix. By 9 G. 4, c. 77, ss. 8, 9, all the powers in the 3 G. 4, c. 126, for diverting roads, &c., are repealed, and there is a re-enactment of 3 G. 4, c. 126, s. 83, with additional powers. As to the sale of unnecessary houses and toll-houses, see 4 G. 4, c. 95, ss. 63, 57. As to diverting other highways, see the General Highway Act, 5 & 6 W. 4, c. 50.

SELLING OLD
ROADS.

How ex-
penses of
jury and wit-
nesses are to
be borne.

ments, or hereditaments, whose building, land, or ground shall be had or taken for the purposes of this Act, any part or parts of the present or old roads in lieu of and in exchange for the same, in such way and manner as such trustees or commissioners, and owners or proprietors, shall agree upon and think fit.

LXXXVII. And be it further enacted, That in case any jury or juries to be summoned and sworn pursuant to the directions and authority of this Act, shall give in and deliver a verdict or assessment for more money as a recompence or satisfaction for the right, interest, or property of any person or persons in any such lands, tenements, hereditaments, or premises, or for any loss or damage to be by him, her, or them sustained, than what shall have been agreed to and offered by such trustees or commissioners before the summoning or returning the said jury or juries, as a recompence or satisfaction for any such right, interest, or property, or for any loss or damage as aforesaid, then and in such case the costs and expenses of summoning and maintaining the said jury and witnesses, and all other expenses attending the hearing and determining such difference (e), shall be borne and paid by the treasurer to the trustees or commissioners, out of any money which shall then be in his hands, or out of any monies to be received by virtue of the Act for repairing and maintaining such turnpike road, such costs and expenses to be settled and ascertained by some justice of the peace for the county or place wherein the dispute shall have arisen, not interested in the matter in question, who is hereby authorised and empowered to settle and

(e) Where, under a local Act, "the costs of the notices and precepts, and summoning the jury and witnesses, and also of the inquest," were made to depend upon the verdict, it was held that this included general costs attending the trial, but not expenses of surveying: *Rex v. Justices of York*, 1 A. & E. 828, 3 Nev. & M. 685. See *Rex v. Gardner*, 6 A. & E. 112; *Rex v. Sheriff of Worcestershire*, 2 Railw. Ca. 661; *Bray v. South Eastern Railway Co.*, 7 D. & L. 307.

determine the same, and to make an order on the treasurer of the trustees or commissioners liable thereto for the payment thereof; but if any such jury or juries so summoned and sworn as aforesaid shall give in and deliver a verdict or assessment for no more or for less money than shall have been agreed to and offered by the trustees or commissioners before the summoning and returning of the said jury or juries, as a recompence and satisfaction for any such right, interest, or property in any such lands, tenements, hereditaments, or premises, or losses or damages as aforesaid, then the costs and expenses of summoning and maintaining the said jury and witnesses, and all other expenses as aforesaid, shall be borne and paid by the person or persons with whom such trustees or commissioners shall have such controversy or dispute; which said costs and expenses having been ascertained and settled by some justice of the peace for the county, riding, or place wherein the cause of dispute shall arise, not interested in the matter in question (who is hereby required to examine and settle the same), shall and may be deducted out of the money so assessed and adjudged, as so much money advanced to and for the use of such person or persons, and the payment or tender of the remainder of such monies shall be deemed and taken, to all intents and purposes, to be a payment or tender of the whole sum or sums so assessed and adjudged, or otherwise such costs and expenses, in case the same or any part thereof shall exceed such damages, and shall not be paid upon demand, after being so ascertained and settled as aforesaid, may be recovered by the said trustees or commissioners by the ways and means hereinafter provided for the recovery of penalties and forfeitures: Provided always, that in all cases where any person or persons shall, by reason of absence, have been prevented from treating, such costs and expenses shall be borne and paid by the said trustees or commissioners in manner aforesaid.

ASSESSING
COMPENSA-
TION.
—

LXXXVIII. And be it further enacted, That, when any turnpike road shall be diverted or turned, and the new road shall be made and completed, such new road

When new
road shall
be complet-
ed, old high-
way to be

STOPPING UP
OLD ROADS,
&c.

—
stopped up,
and the land
sold.

Application
of purchase-
money.

Mines, &c.,
to remain in
the original
possessor.

shall be in lieu of the old road, and shall be subject to all the provisions and regulations in any Act of Parliament contained, or otherwise, to which the old road was subject, and shall be deemed and taken to be a common highway (*f*), and shall be repaired and maintained as such; and the old road shall be stopped up, and the land and soil thereof shall be sold by the trustees or commissioners to some person or persons whose lands adjoin thereto, as hereinafter mentioned with regard to pieces of ground not wanted (*g*); but if such old road shall lead to any lands, house, or place, which cannot, in the opinion of the said trustees or commissioners, be conveniently accommodated with a passage from such new road, which they are hereby authorised to order and lay out if they find it necessary, then and in such case the old road shall be sold, but subject to the right of way and passage to such lands, house, or place respectively, according to the ancient usage in that respect; and the money arising from such sale in either of the said cases shall be applied towards the purchase of the land where such new road shall be made, or in the same manner as the tolls arising on such road, as the trustees or commissioners thereof shall think fit; and upon the completion of any contract whereby any part of the old road shall be given in payment for the value of the ground taken for the new road, or upon payment of the price of any part of the old road, the soil of such old road shall become vested in the purchaser thereof and his heirs; but all mines, minerals, and fossils (*h*) lying under the same shall con-

(*f*) By virtue of this provision, a new road made by the trustees of a local Act becomes a public highway, and will not cease to be so at the expiration of the term for which the local Act was made. See *Rex v. Winter*, 8 B. & C. 785; *Winter v. Charter*, 3 Y. & J. 308; *Reg. v. West Riding Justices*, 5 B. & Ad. 1003; 3 *Burn's Justice*, 793.

(*g*) See note on sect. 86, p. 79.

(*h*) See a more general clause in 7 & 8 G. 4, c. 24, s. 18, as to the property in mines.

tinue the property of the person or persons who would from time to time have been entitled to the same if such old road had continued.

LXXXIX. And be it further enacted, That where the trustees or commissioners of any turnpike road shall have purchased, or shall be possessed of any piece or pieces of ground not wanted for the purposes of such road, it shall and may be lawful for such trustees or commissioners to sell and dispose of the same: Provided always, that the said trustees or commissioners, before they shall sell and dispose of any such piece or pieces of ground not wanted for the purposes of such turnpike road as aforesaid, to any other person or persons, shall first offer the same to the person or persons of whom the same shall have been purchased, or to the person or persons whose lands shall adjoin thereto; and if such person or persons respectively shall then and thereupon refuse, or shall not agree (except with respect to or on account of the price thereof) to purchase the same respectively, on an affidavit being made and sworn before a master or master extraordinary in the high Court of Chancery, or before one of his Majesty's justices of the peace for the county, liberty, or place where such ground is situate (who are hereby respectively empowered to take such affidavit), by some person or persons no way interested in the said piece or pieces of ground, stating that such offer was made by or on behalf of such trustees or commissioners, and that such offer was then and thereupon refused, or was not agreed to by the person or persons to whom the same was made, such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was refused or not agreed to by the person or persons to whom such offer was made (as the case may be); and in case such person or persons shall be desirous of purchasing such piece or pieces of ground, and he, she, or they and the said trustees or commissioners shall differ or not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in manner in this Act directed with respect to disputed value of premises to be taken and used in

SALE OF USE-
LESS LAND.

When any parts of land not wanted for the purposes of roads are to be sold, the first offer to be made to the original or adjoining owners.

What shall be evidence of such offer and refusal.

In case of dispute as to price, the value to be ascertained by a jury.

**SALE OF USE-
LESS LAND.**

pursuance of this Act; and the expense of hearing and determining such difference shall be borne and paid in manner hereinbefore directed with respect to such purchases made by the said trustees, *mutatis mutandis*; and the money to arise by the sale or sales of such pieces or parcels of ground shall be applied by the trustees or commissioners to the purposes of the Act for repairing and maintaining such turnpike road, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or non-application of such money; and the conveyances of such piece or pieces of ground shall be made to the purchaser or respective purchasers thereof, and in such manner and form⁽ⁱ⁾ as is hereinbefore directed with respect to the conveyances to be made of the land constituting any part of the roads hereinbefore directed to be sold.

Application
of compensa-
tion money
exceeding
200*l*.

[*Repealed* by
7 & 8 G. 4,
c. 24, s. 8.]

XC. And be it further enacted, That if any money shall be agreed or awarded to be paid for any lands, tenements, or hereditaments, purchased, taken, or used by virtue of the powers of this Act, by any trustees or commissioners of any turnpike road, which shall belong to any corporation, feme covert, infant, lunatic, tenant for life or in fee tail general or special, or person or persons under any disability or incapacity, such money shall, in case the same shall amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the Bank of England, in the name and with the privity of the accountant general of the high Court of Chancery, to be placed to his account *ex parte* the trustees or commissioners of the road for which such lands, tenements, or hereditaments shall be taken, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, tenements, or hereditaments, in the purchase of the land tax, or towards the discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid, affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or to the like uses, trusts, intents, or purposes; or where such money shall

(i) The form of conveyance is now regulated by 4 G. 4, c. 95, s. 55. And see sect. 63 of that Act, as to the sale of unnecessary tenements.

not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner as the lands, tenements, or hereditaments, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance or settlement shall be existing, undetermined, and capable of taking effect; and in the meantime, and until such purchase shall be made, the said money shall, by order of the said Court of Chancery, upon application thereto, be invested by the said accountant general, in his name, in the purchase of three pounds per centum consolidated, or three pounds per centum reduced Bank annuities; and in the meantime and until the said Bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced Bank annuities shall from time to time be paid, by the order of the said court, to the person or persons who would, for the time being, have been entitled to the rents and profits of the lands, tenements, or hereditaments so hereby directed to be purchased, in case such settlement or purchase were made.

APPLICATION
OF COMPEN-
SATION
MONEY.

XCI. Provided always and be it further enacted, That, if any money so agreed or awarded to be paid for any lands, tenements, or hereditaments purchased, taken, or used for the purposes aforesaid, belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall amount to or exceed the sum of twenty pounds, then, and in all such cases, the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the said Bank, in the name and with the privity of the said accountant general of the high Court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinafter directed; or otherwise the same shall be paid, at the like option, to two trustees to be nominated by the person or persons making such option, and approved by three or more of the trustees or commissioners taking such lands, tenements, or hereditaments (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends and interest arising thereon, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the direction or approbation of the Court of Chancery.

Application
of compensa-
tion money
when less
than 200*l*.
and not less
than 20*l*.

[*Repealed by*
7 & 8 G. 4,
c. 24, s. 8.]

XCII. Provided also, and be it further enacted, That, where such money so agreed or awarded to be paid as last before men-

Application
of compensa-
tion money

APPLICATION
OF COMPEN-
SATION
MONEY.

when less
than 20%.

[*Repealed by*
7 & 8 G. 4,
c. 24, s. 8.]

If compensa-
tion money
be refused,
or the titles
to the land
cannot be
made out
satisfacto-
rily, or if
person can-
not be found,
then money
to be paid
into the
Bank, sub-
ject to the or-
der of the
Court of
Chancery, on
motion or
petition.

[*Repealed by*
7 & 8 G. 4,
c. 24, s. 8.]

Persons in
possession to
be deemed
lawfully en-
titled to the
premises,
until the con-
trary shall
be shewn to

tioned shall be less than twenty pounds, then, and in all such cases, the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, in such manner as the said trustees or commissioners, or any three or more of them, shall think fit; or in case of lunacy or infancy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

XCIII. And be it further enacted, That in case the person or persons to whom any sum or sums of money shall be awarded for the purchase of any lands, tenements, or hereditaments to be purchased by virtue of this Act, shall refuse to accept the same, or shall not be able to make a good title to the premises, to the satisfaction of the trustees or commissioners, or any three or more of them, or in case such person or persons to whom such sum or sums of money shall be so awarded as aforesaid cannot be found, or if the person or persons entitled to such lands, tenements, or hereditaments be not known or discovered, then and in every such case, it shall and may be lawful to and for the trustees or commissioners, or any three or more of them, to order the said sum or sums of money so awarded as aforesaid to be paid into the Bank of England, in the name and with the privity of the said accountant general of the said Court of Chancery, to be placed to his account, to the credit of the parties interested in the said lands, tenements, or hereditaments, (describing them,) subject to the order, control, and disposition of the said Court of Chancery, which said Court of Chancery, on the application of any person or persons making claim to such sum or sums of money, or any part thereof, by motion or petition, shall be and is hereby empowered, in a summary way of proceeding, or otherwise, as to the said court shall seem meet, to order the same to be laid out and invested in the public funds, and to order distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest, of the person or persons making claim thereunto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier or cashiers of the Bank of England, who shall receive such sum or sums of money, is and are hereby required to give a receipt or receipts for such sum or sums of money, mentioning and specifying for what and for whose use the same is or are received, to such person or persons as shall pay any sum or sums of money into the Bank of England as aforesaid.

XCIV. Provided always, and be it further enacted, That where any question shall arise touching the title of any person to any money to be paid into the Bank of England, in the name and with the privity of the said accountant general of the said Court of Chancery, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any Bank annuities to be purchased with any such

money, or to the dividends or interest of any such Bank annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shewn to the satisfaction of the said Court of Chancery; and the dividends or interest of the Bank annuities to be purchased with such money, and also the capital of such Bank annuities, shall be applied and disposed of accordingly, unless it shall be made to appear to the said court, that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

APPLICATION
OF COMPEN-
SATION
MONEY.

the Court of
Chancery.

[Repealed by
7 & 8 G. 4,
c. 24, s. 8.]

XCV. Provided always, and be it further enacted, That, where, by reason of any disability or incapacity of the person or persons or corporation entitled to any lands, tenements, or hereditaments to be purchased under the authority of this Act, the purchase money for the same shall be required to be paid into the Court of Chancery, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this Act, it shall be lawful for the said Court of Chancery to order the expenses of all purchases from time to time to be made in pursuance of this Act, or so much of the said expenses as the said court shall deem reasonable, together with the necessary costs and charges of obtaining such order, to be paid by the trustees or commissioners, or any three or more of them, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

Court of
Chancery to
direct pay-
ment of ex-
penses in
cases where
purchases of
other lands
are made.

[Repealed by
7 & 8 G. 4,
c. 24, s. 8.]

XCVI. And be it further enacted, That it shall not be lawful for the trustees or commissioners of any turnpike road, in altering or diverting the course of any part of the turnpike road under their care and management, to deviate over any inclosed lands or grounds more than one hundred yards from the line or course of such turnpike road, without the consent, in writing, of the owner or proprietor of such lands or grounds, or to take in or make use of any garden, yard, paddock, park, planted walk or avenue to a house, or any inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees, or any part thereof respectively, without the like consent of the owner or proprietor thereof first had and obtained: Provided always, that nothing herein contained shall extend, or be deemed, taken, or construed to extend, to revoke, limit, abridge, alter, or vary any powers or authorities contained in any Act or Acts of Parliament existing and in force at the passing of this Act, for making, altering, or diverting any turnpike road or roads or the course thereof, to be made, altered, or diverted and maintained under the authority of such Acts, but the same powers and authorities shall and may be used, exercised, and carried into effect by the

Trustees not
to deviate
more than
100 yards
from present
line of road,
nor make
use of any
garden, &c.,
without con-
sent of the
owner.

[Repealed by
4 G. 4, c. 95,
s. 64, infra.]

MATERIALS. — trustees or commissioners appointed by such Acts, fully and effectually, anything herein contained to the contrary notwithstanding.

Power to get materials from any river or brook, or from any common or waste lands, without expense, filling up the pits, &c.

or from the lands of any person, not being garden ground, &c., on tendering satisfaction for damages;

XCVII. And be it further enacted, That it shall be lawful for the surveyor or surveyors to the trustees or commissioners of every turnpike road, and for all such persons as he or they shall appoint, to search for, dig, gather, take, and carry away any materials for making or repairing any turnpike road, out of any common river or brook (not being within fifty yards of any bridge, dam, weir, or jetty), or out of or from any waste or common in any parish, hamlet, or place in which any part of such road may lie, or in any adjoining parish, hamlet, or place, and to haul and carry away any such materials when got over any common or waste lands, without paying any thing for such materials, and without being deemed a trespasser or trespassers; the said surveyor or surveyors, or other person or persons, filling up the pits or quarries, levelling the grounds, or sloping down the banks wherefrom such materials shall be taken, or railing or fencing off such pits or quarries, so that the same shall not be dangerous to any persons or cattle, and paying or tendering for the damage done by going through and over any inclosed lands or grounds for or with such materials, and such damages to be ascertained as hereinafter mentioned; and also that it shall be lawful for the said surveyor or surveyors, and such person or persons as he or they shall appoint, to search for, dig, get, gather, take, and carry away any such materials, in or out of the land of any person or persons where the same may be had or found, in any parish, hamlet, or place, in which any part of such road shall lie or be situate, or in any adjoining parish, hamlet, or place, (not being a garden(k), yard, park, paddock, planted walk or avenue to any house, or any piece of ground planted and set apart as a nursery for trees), making or tendering such satisfac-

(k) A field planted with garden stuff has been held to come within this exemption; *Hughes v. Brand*, Amb. 105.

tion for such materials, and for the damage done to the owners or occupiers of the lands where and from whence the same shall be dug, gathered, and carried away, or over which the same shall be carried, as the said trustees or commissioners shall judge reasonable; and also to land on and carry through or over any inclosed lands or grounds, (not being a garden, yard, park, paddock, planted walk, or avenue to a house, or any piece of ground planted and set apart as a nursery for trees), or on, through, or over any open land or common, any stone or other materials for making or repairing any such road, or for building or repairing any present or future toll-house or toll-houses on or by the sides thereof, from any river, stream, or canal, in any parish, hamlet, or place in which any such road lies, or in any adjoining parish, hamlet, or place, paying or tendering for the damage done in landing on or going through or over any inclosed lands or grounds for or with such materials, such sum or sums of money as the said trustees shall judge reasonable; and in case of any difference between such trustees or commissioners, surveyors, or other persons appointed or employed as aforesaid, and the owners and occupiers of such lands, or any of them, concerning such payments and damages as aforesaid, any two or more justices of the peace for the county, riding, or place wherein the place from whence such materials shall have been taken shall be situate, on ten days' notice thereof being given in writing by either party to the other, shall hear, settle, and determine the matter of such payments and damages, and the costs attending the hearing and determining the same (l).

MATERIALS.

and materials may be carried through any inclosed or open lands, on tendering damages.

Any difference as to damages may be settled by two justices.

XCVIII. Provided always, and be it further enacted, That it shall not be lawful for any surveyor, or any other person or persons acting under the authority of this Act, to dig, gather, get, take, or carry away any

Notice to be given before materials are taken from private lands, and two jus-

(l) See Form of Notice, Appendix, No. 51. By 7 & 8 G. 4, c. 24, s. 15, the justices are not to award a larger sum for materials than they would actually sell for.

MATERIALS. materials for making or repairing any turnpike road, or for other such purpose or purposes as aforesaid, out of or from any inclosed land or ground (*m*), until notice (*n*) in writing signed by the surveyor shall have been given to the owner or owners of the premises from which such materials are intended to be taken, or his or her known agent, or to the occupiers of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or occupier, to appear before any two or more justices of the peace acting in and for the county, liberty, or place where the lands from whence such materials are intended to be taken shall lie, to show cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorise such surveyor or other person to dig, get, gather, take, and carry away such materials, at such time or times as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear by himself or herself, or his or her agent, the said justices shall and may (upon proof on oath of the service of such notice, and which oath they are hereby empowered to administer), make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his or her agent, had attended (*o*).

(*m*) These words now include all lands and grounds in the exclusive occupation of one or more persons for agricultural purposes, though not separated from any adjoining lands or grounds of other persons, or from the highway, by any fence or other inclosure: 4 & 5 Vict. c. 51. See *Tapsell v. Crosskey*, 7 M. & W. 441.

(*n*) See Form of Notice, Appendix, No. 50.

Materials.

(*o*) The form of a magistrate's authority for the surveyor to get materials from private lands is given in the Appendix, No. 52; but in drawing up any such authority, it may be proper to advert to the case of *Rex v. Manning*, 1 Burr. 377, in which many objections were taken to the form of an order for this purpose,

XCIX. And be it further enacted, That, if any surveyor of any turnpike road, or any person employed by him, shall, by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials for repairing any highways, make or cause to be made any pit or hole in any common or other lands or grounds, rivers or brooks as aforesaid, wherein such materials shall be found, the said surveyor shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and shall, within three days after such pit or hole shall be opened or made, where no gravel, stones, or materials shall be found, cause the same forthwith to be filled up, levelled,

MATERIALS.

If pits or holes are made in getting materials, surveyor shall cause them to be filled up or fenced off.

made by the sessions, pursuant to the provisions contained in a private Act; and such order was ultimately quashed, on the ground that the particular lands from which the materials were to be obtained were not set forth, the order having only in general terms directed the surveyor to take them "from all and every the lands, fields, or grounds in the occupation of the said John Manning;" the Court holding that a general order to dig all over the estate, and leaving it to the *discretion of the surveyor*, could not be made, but that the particular part must be fixed upon and determined by the justices. The Court likewise held, that the satisfaction for obtaining the materials ought to be awarded in the order to the owner *or* to the occupier, *or* to both, according to the damages sustained by the one *or* by the other, *or* by both. Similar powers were contained in the 13 G. 3, c. 78, s. 81, &c., under which it was held that the satisfaction must be made subsequent, and not antecedent to the damage committed; and the sufficiency of the amends can only be settled by the justices, and not at *Nisi Prius*, unless the trespass be committed maliciously, and not for the purposes of the Act; as by wantonly deviating from a subsisting road, which is sufficiently convenient, and making a new road: *Boyfield v. Porter*, 13 East, 200. As to the time within which actions must be brought for damages in respect of taking materials, see *Roberts v. Reed*, 16 East, 215; *Wordsworth v. Harley*, 1 B. & Ad. 391. And see *Lord Oakley v. Kensington Canal Company*, 5 B. & Ad. 138, ante, p. 72; 5 & 6 W. 4, c. 50, s. 53.

MATERIALS.

—

Penalty for
not filling up
or fencing
off, 20s.

Penalty for
not fencing
off, &c., in
six days after
receiving no-
tice, not
more than
10s. nor less
than 40s.

Power to
contract for
lands to get
materials.

and covered with the turf or clod which was dug out of the same; and where any such materials shall be found, within fourteen days after having dug up sufficient materials in such pit or hole, if the same is not likely to be further useful, cause the same to be filled up, sloped down, or fenced off, and so continued; and if the same is likely to be further useful, the said surveyor shall secure the same by posts and rails, or other fences, to prevent accidents to persons or cattle; and in case such surveyor shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he or they shall forfeit the sum of twenty shillings for every such default; and in case such surveyor shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he or they shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, such surveyor shall forfeit and pay any sum not exceeding ten pounds, nor less than forty shillings, for every such neglect, to be determined and adjudged by such justice or justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, in such manner as the said justice or justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied (*p*).

C. Provided always, and be it further enacted, That it shall and may be lawful for the said trustees or commissioners to contract and agree with any person or persons whomsoever for the purchase or demise from him, her, or them of, and to hold, any land or ground for the purpose of digging stones, gravel, and materials therefrom for the repair or use of the said road, and at

(*p*) See sect. 141, &c. post, and 5 & 6 W. 4, c. 50, s. 65.

any time afterwards to sell the land or ground so purchased by public auction or tender: Provided also, that the entering into any such contract or agreement as last aforesaid shall not be compulsory against any person or persons unwilling to enter into the same.

CI. And be it further enacted, That, if any person or persons shall take away any materials which shall have been gotten, dug, or gathered for the repair or use of any turnpike road, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any turnpike road, before the surveyor of such road and the workmen employed for getting such materials shall have discontinued working therein for the space of six weeks (except the owner or occupier of any private grounds, and persons authorised by such owner or occupier to get materials in such quarry for his own private use, and not for sale), every person so offending shall, for every such offence, forfeit and pay any sum not exceeding five pounds.

MATERIALS.

Penalty on taking away materials before surveyor has discontinued digging for them, 5*l*.

CII. And be it further enacted, That the trustees or commissioners of every turnpike road are hereby empowered to purchase or rent any piece or pieces of land or ground, not exceeding in any one place six yards square, on the sides of such road, as repositories for stone, gravel, and other materials for making or repairing the same; and in case any difference shall arise between such trustees or commissioners and the owner of such land or ground, with respect to the value thereof, or the necessity or propriety of taking such land or ground, the same shall be settled and determined by any two of his Majesty's justices of the peace acting in and for the county where the said land or ground shall be situated, in manner hereinbefore directed with respect to getting materials for the repair of any turnpike road (*q*).

Repositories for materials to be provided.

Two justices shall settle any difference that may arise as to value.

(*q*) See 4 G. 4, c. 95, s. 56, extending this power in places within ten miles of the Royal Exchange.

MATERIALS.

Canal companies may lower their tolls on materials for repairing turnpike roads.

CIII. And be it further enacted, That it shall and may be lawful for the company of proprietors, or the trustee or trustees for the proprietors of any canal, or of any railway or tramroad, on which any flint, gravel, stone or other materials for the repair of any turnpike road shall or may be conveyed, and they are hereby authorised and empowered, to lessen and reduce the tolls and rates imposed by any Act of Parliament by which any such company shall be appointed, or any other Act whatsoever, on the carriage of such flint, gravel, stone, or other materials carried on the said canal or railway, and to appoint such lower tolls and rates to be taken for the carriage and conveyance of the same as the said company or trustees shall think proper; and all such reduced tolls shall and may be collected, taken, and recovered by the same persons and means, and by and under the same powers, provisions, penalties, and forfeitures, as the original tolls might have been taken in case the same should not have been reduced; any Act or Acts of Parliament, bye-law or ordinance, or trust deed, to the contrary notwithstanding(*r*).

Statute labour to remain as heretofore.

[*Repealed by 4 G. 4, c. 95, s. 79, infra.*]

CIV. And be it further enacted, That all persons who by law are or shall be liable to do statute work, or are or shall be chargeable towards the repairing and amending any turnpike road, shall be and remain liable thereto in like manner in every respect as they now are or have heretofore been; and it shall be lawful for any two or more justices of the peace in and for the county, city, or place in which any such turnpike road shall lie or be situate, and they are hereby required and empowered, upon application made to them by any three or more of the trustees or commissioners, or by their clerk or surveyor of such turnpike road, yearly to adjudge and determine what part or proportion of the statute work shall every year be done upon such road by the inhabitants of the respective parishes, hamlets, and places in or through which the said road doth or shall lie, lead, or pass, and also what proportion of the money received by the surveyor or surveyors of the highways of every such parish, hamlet, or place, in lieu of or as a composition for such statute work as aforesaid, shall be by him, her, or them paid to the said trustees or commis-

(*r*) Road materials are exempt from tolls on turnpike roads; see sect. 32, ante, p. 24.

sioners, or their treasurer or treasurers; and in order thereunto, the surveyor or surveyors of the highways for every such parish, hamlet, or place shall, on an order in writing made by the said justices, on an application to them by the trustees or commissioners of the turnpike road, or any three or more of them, or by their clerk or surveyor, and respectively delivered to such surveyor or surveyors of the highways, or left at his or their last or usual place of abode, bring and deliver within ten days afterwards, to the said turnpike surveyor, or to his place of abode, true and perfect lists in writing of the names of the several persons who within such parish, hamlet, or place are by law subject and liable to do statute work for that year, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts or otherwise, and also the amount of the respective sums to be paid; which lists of names shall be made in such manner and under such regulations and restrictions as are or may be directed by any law or statute in force or effect for the repairs of the public highways, and may be made in the form specified in the schedule to this Act; and the said turnpike surveyor having received such lists shall within five days afterwards give a notice to the surveyor or surveyors of the highways of the time when such lists will be laid before the said justices, in order to apportion the said statute duty; and, at the time appointed in and by such notice, the said lists shall be laid before the said justices by the said turnpike surveyor, in the presence of the said surveyor of the highways (if he shall attend); and out of such lists the said justices shall and may allot, appoint, and order such and so many of the persons who shall appear to be subject and liable to do statute work in every year upon such road as the said justices shall think reasonable; and the same shall be done on such days and at such time, (not being hay-time or harvest), and on such parts of the said road, as the said trustees or commissioners, or their surveyor or surveyors, shall from time to time order, direct, or appoint; and the said justices shall and may order and direct the persons who by such lists shall be subject and liable to the payment of any money in lieu of or as a composition for the statute work as aforesaid, to pay such proportion thereof as the said justices shall think proper to the surveyor or surveyors of such parishes, hamlets, and places respectively, to be by him or them paid over to the said trustees or commissioners, or their treasurer, or other person duly authorised to receive the same, at such time or times as the said justices shall direct; and in default of payment thereof, the same shall and may be recovered by distress and sale of the goods and chattels of the respective persons liable to the payment thereof, in like manner as any penalty is by this Act authorised or directed to be recovered; and each and every person who shall neglect or refuse to do such statute work as aforesaid, after notice in writing given to or left for him, her, or them, at his, her, or their last or usual place or places of abode for that purpose, by any surveyor to the said trus-

**STATUTE
DUTY.**

—
List of the names of persons liable to statute duty to be produced and laid before justices.

Justices shall appoint so many persons to do statute work as they think reasonable, and appoint the composition to be paid by others.

Penalty on persons neglecting to do statute work.

STATUTE
DUTY.
—

Penalty on
surveyors
neglecting to
give in lists,
not exceed-
ing 10*l*.

tees or commissioners, shall, for every day of his, her, or their default, or the default of any labourer or labourers, team or teams, draught or draughts, horse or horses, beast or beasts, to be provided by him, her, or them, be subject and liable to such fines, penalties, and forfeitures as such person or persons may be subject or liable to by any law or statute now in force or effect for repair of the public highways; and if any person who shall come to work as a labourer, or shall be sent with any team or draught to work on any part of such road, shall be found idle or negligent by any surveyor to the said trustees or commissioners, such surveyor is hereby empowered to remove and dismiss the person who shall be so found idle or negligent as aforesaid, and in that case every such person shall be subject and liable to the respective forfeitures and payments as aforesaid, as if he had neglected or refused to come, or such team or draught had not been sent to work on any part of such road; all which forfeitures shall be paid to the treasurer of the said trustees or commissioners, and applied towards amending the said road; and in case the surveyor or surveyors of the highways for any of the said parishes, hamlets, or places, shall refuse or wilfully neglect to give in any such lists as aforesaid, or shall knowingly or wilfully give in false and imperfect lists, or shall refuse or neglect to collect or pay over such composition money, or any part thereof, in manner aforesaid, every such surveyor so offending shall for every such offence forfeit and pay any sum not exceeding ten pounds.

Statute work
may be com-
pounded for,
and composi-
tion money
to be paid
yearly, by
Sept. 29.

CV. And be it further enacted, That it shall be lawful for the trustees or commissioners of every turnpike road to compound and agree with any person or persons, bodies politic or corporate; for the repairs or statute work to be by him, her, or them, done on any such turnpike road, and also with the surveyor or surveyors of the highways for any of the parishes, hamlets, or places in which the said road doth or shall lie and be situate(*s*), for a certain sum of money, by the year

Statute duty.

(*s*) It will be observed, that the trustees are authorised to compound for *repairs*, as well as *statute duty*, with persons or bodies politic; but for *repairs* only, with parishes; and as the laws for regulating statute duty on highways are now repealed, (see 5 & 6 W. 4, c. 50, s. 1, &c.) it is doubtful whether such composition for statute duty can be entered into with any parish under the above section, as to roads which may hereafter be made. But where a composition has already been entered into, either for repairs or statute duty, there seems no objection to its being continued. See 7 & 8 G. 4, c. 24, s. 17; 4 G. 4, c. 95, s. 80, which, as well as

or otherwise, as the said trustees or commissioners shall think reasonable, in lieu of the whole or any part of the statute work or other work to be by all or any of the said inhabitants and occupiers done on the said road, which composition money shall always be paid by the surveyor or surveyors of the highways, or other officer of the parish, hamlet, or place, or by the person or persons so compounding, to the treasurer of the trustees or commissioners in advance, on or before the twenty-ninth day of September in each and every year, or otherwise such person or persons, bodies politic or corporate, or inhabitants and occupiers within such parish, hamlet, or place, shall not be permitted to compound for that year; and all such composition money shall be applied for the purposes of such turnpike road; and that every such surveyor of the highways who shall pay any such composition money shall be reimbursed the same in like manner as surveyors of the highways are by the laws in being to be reimbursed the money by them laid out and expended in buying materials for the repairing of any other highway or highways.

STATUTE
DUTY.

[*Repealed as to the time for paying the composition money by 4 G. 4, c. 95, s. 82; and see note below.*]

CVI. And be it further enacted, That it shall and may be lawful for the trustees or commissioners of any turnpike roads to contract and agree (*t*) with any person or persons liable to the repair of any part of the road under the care and management of such trustees

Trustees may contract with persons liable by tenure to the repairs of roads.

the above clause, are yet in force, except so far as they have been affected by the repeal of the statute duty on highways, before referred to. The 3 G. 4, c. 126, s. 110, p. 102, authorises the Court to apportion the fine and expenses between parishes and trustees, in case an indictment should be preferred for non-repair; and there seems no good reason why a similar apportionment should not be made without having recourse to legal proceedings, where the funds of the turnpike trust require it, and the parish authorities consent. For a general power of contracting for works, &c., see 4 G. 4, c. 95, s. 78.

(*t*) See Form of Agreement, Shedule, No. 8; and see the following note, as to the liability here referred to. As to the trustees' liability in respect of contracts, see & 8 G. 4, c. 24, s. 2.

COMPOSITION
FOR REPAIRS.

OR commissioners, or of any bridges thereon, by tenure or otherwise, for the repair thereof, for such term as they shall think proper, not exceeding three years, and to contribute towards the repair of such road or bridges such sum or sums of money as they shall think proper, out of the tolls arising on such turnpike road.

Compositions
may be en-
tered into by
counties for
repairing

CVII. And whereas many bridges on turnpike roads are by prescription at present liable to be repaired by certain parishes, and not by the county or counties(u)

County
bridges.

(u) By the common law, as the inhabitants of parishes are *prima facie* liable to the repair of highways (see note on 7 & 8 G. 4, c. 24, s. 17), so, in the absence of other usage, prescription, or statute to the contrary, the inhabitants of counties are liable to the repair of public bridges: Hawk. P. C. b. 1, c. 7, s. 1; Bac. Abr. *Bridges*; *Rex v. W. R. Yorkshire*, 5 Burr. 2594. And every bridge which is of public utility, and built "over water flowing in a channel more or less defined, even although such channel may be occasionally dry," is a public bridge, (*Id.*; *Rex v. Oxfordshire*, 1 B. & Ad. 289; see *Rex v. Trafford*, 1 B. & Ad. 874, 2 C. & J. 265, 8 Bing. 204; *Reg. v. Derbyshire*, 2 Q. B. 745; *Reg. v. Gloucestershire Justices*, Car. & M. 506), whether it has been erected and dedicated by an individual, or by the trustees of a turnpike road, (*Rex v. West Riding of Yorkshire*, 2 East, 342; *Rex v. Buckinghamshire*, 12 East, 192; *Rex v. Middlesex*, 3 B. & Ad. 201; *Rex v. Oxfordshire*, 6 D. & R. 231), unless there is some special provision exempting the county from its common law liability, or throwing it on others, as in *Rex v. Somerset*, 16 East, 305. And this general liability attaches, although the bridge may be used only on occasions of floods, &c. *Rex v. Devon*, Ry. & M. 144; *Rex v. Northampton*, 2 M. & Sel. 262, and although built larger than was necessary for the situation: *Rex v. Lancashire*, 2 B. & Ad. 813. Its having no *parapet* does not of itself prevent its being a county bridge: *Rex v. Whitney*, 3 Ad. & E. 69. But a useless or merely ornamental bridge, or one erected principally for the benefit of its founder or proprietors, is not a public bridge: *Rex v. Lindsey*, 14 East, 317; 2 East, 342 & 356, n.; *Rex v. Kerrison*, 3 M. & Sel. 526. See *Reg. v. Ely*, 19 L. J., M. C., 227. Nor are the inhabitants of a county liable to *widen* a public bridge by force of their obligation to repair it: *Rex v. Devonshire*, 7 D. & R. 147, 4 B. & C. 760. Nor will the mere widening of a bridge throw the liability of repairs from a parish,

in which they are situated, and which bridges, from change of times and circumstances, are become no longer

COMPOSITION
FOR REPAIRS.

bridges repaired by
parishes.

&c. upon the county: *Rex v. W. R. Yorkshire*, 2 East, 353; but see *Rex v. Surrey*, 2 Camp. 455; *Rex v. Middlesex*, 3 B. & Ad. 201. Nor is the county liable to the repairs of *any* bridge erected since 43 Geo. 3, unless it has been built under the direction of the county surveyor, &c. 43 Geo. 3, c. 59, s. 5; even although erected by road trustees under an Act of Parliament: *Rex v. Derbyshire*, 3 B. & Ad. 147; but the liability of the county is not taken away, if, without such sanction, the bridge is merely widened by trustees, *Rex v. Lancashire*, 2 B. & Ad. 813, or re-built with the old materials of a former bridge, on its being washed away: *Rex v. Devonshire*, 5 B. & Ad. 383, 2 Nev. & M. 212. Where the inhabitants of a county are liable to the repairs of a bridge, they are liable to repair the highway to the extent of three hundred feet at each end of the bridge: 22 H. 8, c. 5, s. 9; *Rex v. West Riding of Yorkshire*, 7 East, 588; and if a second bridge be thrown over any part of the three hundred feet and adopted by the public, the inhabitants of the county in which the new bridge lies must repair it: *Rex v. Devonshire*, 14 East, 477. This liability having been complained of as an unnecessary expense to the counties, is by 5 & 6 W. 4, c. 50, to be discontinued so far as relates to the surface of the road on and approaching to bridges hereafter to be built, leaving the walls, &c., to be repaired by the counties as heretofore. When bridges are situated in two or more counties, see 22 H. 8, c. 5, s. 23. Although the county is liable to repair public bridges, if it does not appear who else ought to repair them; yet a hundred, parish, or township, a corporation aggregate, or a private individual may, in consequence of a special prescription, or by reason of the tenure of certain lands, be compelled to repair bridges. Hale's P. C. 143; *Rex v. Oswestry*, 6 M. & Sel. 361; *Rex v. Hendon*, 4 B. & Ald. 628; *Rex v. Kent*, 13 East, 220; and see *Rex v. Lindsey*, 14 East, 317, where it was held that a company empowered to render a river navigable, and to alter such highways as might hinder the navigation, were bound to keep in repair a bridge which they had substituted for a public ford. And in the case of *Rex v. Kerrison*, before referred to, it was held, that if a company is empowered by an Act of Parliament to carry a canal through a public road, it is bound to throw a bridge across the cut, and repair it; on the principle that equity requires that he who reaps

Parish
bridges.

REPAIRS.

ger sufficiently convenient for the use of the public without being enlarged or otherwise improved; be it therefore further enacted, That it shall and may be lawful for any such county or counties, parish or parishes respectively, to enter into a composition or agreement with each other, and by the authority of those persons who shall be legally competent to make rates for such county and parish respectively, whereby the improvement and future repair of any such bridge shall be undertaken and lie upon the county or counties in which such bridge is locally situated; and that all rates made for carrying into effect any such composition, agreement, repairs, or improvement, shall be made and assessed in the same manner as other the rates of such county or parish respectively, and shall be good and valid to all intents and purposes in the law whatsoever.

Compositions may be entered into by trustees and parishes for repair of bridges.

CVIII. And be it further enacted, That it shall and may be lawful for the trustees or commissioners of any turnpike road, and for such parish or parishes, in like manner to enter into a composition or agreement with each other, and by the authority of the persons at present legally competent to make rates for such parish or parishes(x), whereby, in consideration of such sum or sums of money as shall be agreed upon being yearly paid to the treasurer of the trustees or commissioners entering into such composition or agreement, out of the rates to be raised for the repair of the bridge or bridges the subject thereof, the repairs of any such bridge shall, during the continuance of any Act or Acts of Parliament under which such trustees or commissioners shall be appointed or act, be undertaken and carried on by the said trustees or commissioners; and that all rates and assessments raised and levied for carrying such composition or agreement into effect, shall, in like manner, be good and valid to all intents and purposes whatsoever.

Where the repairs and

CIX. And whereas there are or may be turnpike

the benefit should bear the burthen. See also 43 G. 3, c. 59; 52 G. 3, c. 110; 55 G. 3, c. 143; and 5 & 6 W. 4, c. 50, regulating the repair of county bridges; and as to parish bridges, see the Act last referred to.

(x) See the foregoing section, and note thereon.



roads in such a state and condition with regard to their repairs and the revenues arising upon them, that the statute duty required to be performed upon the same may be in the whole or in part dispensed with, and employed more advantageously for the benefit of the other public highways within the parish, township, or place liable to the performance of such duty; be it therefore enacted, That it shall and may be lawful for the justices of the peace at any special sessions, upon application to them made by the surveyor of the highways, or by any two inhabitants of any parish, township, or place, to summon before them the clerk and surveyor of any turnpike road within such parish, township, or place, alleged to be in the situation before described, and then and there to produce before them a state of the revenues and debts of such turnpike road, and for such justices to inquire into the state and condition of the repairs thereof, and also of the repairs of such other highways; and if it shall appear to the said justices, upon full and clear evidence, that the whole or any part of such statute duty may be conveniently dispensed with from such turnpike road without endangering the securities for the monies advanced upon the credit of the tolls thereof, and that such statute duty is wanted for the repairs of the other highways within such parish, township, or place, then and in that case it shall and may be lawful for the said justices to order the whole or part of such statute duty(y) to be performed upon the highways not being turnpike within such parish, township, or place, under the direction of the surveyor thereof, during such time as to them shall seem reasonable, and the same shall be performed accordingly(z).

REPAIRS.

revenues of a turnpike road shall be such as that statute labour will not be required for such road, justices may dispense with it.

(y) For Form of Order and Certificate, see the Schedules, Nos. 12 & 13.

(z) Although the regulations requiring statute duty on highways are now repealed, there is no absolute repeal of the provisions in the general turnpike laws referring to such statute duty. The above section, giving to the magistrates a power to

INDICTMENT.

Where parish indicted for non-repair of a turnpike road, the court to apportion the fine between the parish and the trustees or commissioners.

CX. And be it further enacted, That, when the inhabitants of any parish, township, or place shall be indicted or presented for not repairing any highway being turnpike road, and the court before whom such indictment or presentment shall be preferred shall impose a fine for the repair of such road, such fine shall be apportioned, together with the costs and charges attending the same, between the inhabitants of such parish, township, or place, and the trustees or commissioners of such turnpike road, in such manner as to the said court, upon consideration of the circumstances of the case, shall seem just; and it shall and may be lawful for such court to order the treasurer of such turnpike road to pay the sum so proportioned for such turnpike road out of the money then in his hands or next to be received by him, in case it shall appear to such court, from the circumstances of such turnpike debts and revenues, that the same may be paid without endangering the securities of the creditors who have advanced their money upon the credit of the tolls to be raised thereupon, which order shall be binding upon such treasurer, and he is hereby authorised and required to obey the same (a).

summon the turnpike surveyor to produce a statement of the revenues and debts of the road, may perhaps still be applied in proceedings before them, for compelling repairs under the General Highway Act, 5 & 6 W. 4, c. 50, s. 94. See that section, and notes thereon.

Fines for non-repair.

(a) It will be seen, by 5 & 6 W. 4, c. 50, ss. 94, 95, and notes thereon, that the remedy for not repairing a highway is now by summary proceedings before a magistrate; and if the liability to repair comes into question, an indictment is to be preferred by order of the justices before whom the summary proceedings have been commenced. It has been decided, that no indictment will lie against the trustees of a turnpike road: *Rex v. Netherthong*, 2 B. & Ald. 179; and it is presumed, notwithstanding the general words in 5 & 6 W. 4, c. 50, s. 95, that the indictment must still in all cases be against the parish, &c., or party bound to repair by tenure. But when an indictment has been or may be preferred, the above section gives the Court a power to apportion the fines and expenses between the parish and trustees; and it would ap-

CXI. And be it further enacted, That it shall be lawful for the trustees or commissioners to make and keep in repair, or cause to be made and kept in repair, any causeway or causeways for the use of foot passengers, in, upon, or on the sides of the turnpike road, in such manner as they shall think proper(*b*); and also to make or cause to be made a road through the grounds adjoining to any ruinous or narrow part of any turnpike road, (not being the site or ground whereon any house or houses stand, nor being a yard, garden, park, paddock, planted walk or avenue to any house, or any inclosed ground planted and set apart as a nursery for trees), to be made use of by all passengers, cattle, and carriages, as a public highway, whilst the old road is repairing or widening, and till such time as it shall be convenient for passengers and carriages to pass along the same(*c*), making such recompence to the owners and occupiers of such private grounds respectively, for the damages they shall or may thereby sustain, as shall be adjudged reasonable by the trustees or commissioners of the road under repair or alteration(*d*); and in case of any difference concerning such damages between such owners or occupiers and such trustees or commissioners, that then it shall and may be lawful for any two or

TEMPORARY
ROAD, &c.

Power to
make cause-
ways.

Where turn-
pike road is
ruinous,
roads may
be made
through ad-
joining
grounds.

Recompence
to be made
to owners
for damages.

In case of
difference,
two justices
shall settle it.

pear that the Court of King's Bench may apportion the fine for non-repair of a road between the parish and the trustees of a turnpike road, although the indictment has been originally preferred at the assizes, and afterwards removed by certiorari: *Rex v. Upper Papworth*, 2 East, 413. See *Rex v. Pembridge*, 7 A. & E. 124.

(*b*) But see the restriction in sect. 112. Footpaths are part of the turnpike road: *Loveridge v. Hodson*, 2 B. & Ad. 602.

(*c*) This provision is in *affirmance* of the common law. "Highways being for the public service, if the usual tract be impassable, it is for the general good that people should be entitled to pass in another line:" *Per Lord Mansfield*, in *Taylor v. Whitehead*, 2 Doug. 745. See the Form of an Award of Satisfaction of Damages, in *Bateman's Highway Act*, Appendix, No. 29.

(*d*) See *Lister v. Lobley*, 7 A. & E. 124, post.

**TEMPORARY
ROAD, &c.**

more justices of the peace acting in and for the county wherein such grounds shall be situate, on fourteen days' notice in writing being given by either party to the other, to settle, adjudge, and finally determine what recompence shall be made to such owners and occupiers, for the damages they shall have sustained as aforesaid.

**Trustees not
empowered
to repair
causeways
unless spe-
cially au-
thorised.**

CXII. Provided always, and be it further enacted, That nothing herein contained as to the making or maintaining any causeway or footpath, or any other matter or provision in this Act, shall extend or be deemed or construed to extend to authorise or empower any trustees or commissioners of any turnpike road to lay down, continue, repair, or maintain any pavement, or any paved or pitched causeway or footpath, in or upon or at the side of any turnpike road within any town, village, or hamlet, where such turnpike road shall pass through the same, unless provision shall have been or shall be specially made for that purpose in the Act or Acts of Parliament under which such turnpike road shall be made, maintained, or repaired: but in default of such provision, all and every such pavement, paved or pitched causeway or footpath, within such town, village, or hamlet, shall be made, repaired, and maintained by and at the costs of the inhabitants of such town, village, or hamlet, or by such other persons as shall be in anywise liable to make, maintain, and repair the same.

**Ditches, &c.,
of sufficient
depth and
breadth
shall be made
by the occu-
piers of lands
for keeping
the roads
dry.**

CXIII. And be it further enacted, That ditches, drains, or watercourses^(e) of a sufficient depth and breadth, for the keeping all turnpike roads dry, and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges, shall be made and laid where any carriageways or footways lead out of the said turn-

(e) See 4 G. 4, c. 95, s. 67, authorising the surveyor to make drains, &c.; and see the next section, and note thereon, as to turning drains, &c.; and as to the trustees' liability in respect of cutting drains, see 7 & 8 G. 4, c. 24, s. 2, and cases there cited.

pike roads into the lands or grounds adjoining thereto, by the occupier or occupiers of such lands or grounds; and ever person or persons who shall occupy any lands or grounds adjoining to or lying near such turnpike road through which the water hath used to pass from the said turnpike road, shall and is and are hereby required, from time to time as often as occasion shall be, to open, cleanse, and scour the ditches, water-courses, and drains for such water to pass without obstruction; and that every person making default in any of the matters or things aforesaid, after ten days' notice to him, her, or them given, shall for every such offence forfeit any sum not exceeding five pounds(*f*).

DITCHES,
DRAINS, &c.

Penalty on
default, not
exceeding 5*l*.

CXIV. And be it further enacted, That it shall be lawful for the surveyor of every turnpike road, and such person as he or they shall appoint, to remove and prevent all annoyances(*g*) on every part of every turn-

For remov-
ing and pre-
venting an-
noyances.

(*f*) See Forms of Notices, Appendix, Nos. 68, 69.

(*g*) There is no doubt that all injuries whatsoever to a highway, as by digging a ditch, or making a hedge across it, or laying logs of timber on it, or by doing any other act which will render it less commodious to the queen's subjects, are public nuisances at common law: Hawk. P. C. 76, s. 144. A bridge built on a highway may, if it be not of public utility, be indicted as a nuisance: *Rex v. W. R. Yorkshire*, 2 East, 342. And it is clearly a nuisance at common law to erect a new gate in a highway, though it be not locked, and though it open and shut freely; but where such a gate has continued time out of mind, it shall be intended that it was set up at first by consent, on a composition with the owner of the land on laying out the road: 1 Hawk. P. C. c. 75, s. 9, and c. 76, s. 146; 3 Com. Dig. (*Chemin*). It is a nuisance to suffer the highway to be incommoded by reason of the foulness of adjoining ditches, or by boughs of trees hanging over it, &c.; and an occupier, as such, though at will only, is indictable for suffering a house, standing upon a highway, to be ruinous; and it is said, that the owner of trees hanging over a highway to the annoyance of travellers, is bound by the common law to lop them, and that any other person may lop them so far as to avoid the nuisance: 3 Bac. Abr. *Highways*, (E); 1 Hawk. P. C. c. 76, ss. 5, 8, 147; 1 Lord Raym. 737. Throwing property temporarily

Nuisances,
annoyances,
and obstruc-
tions.

DRAINS, &c. pike road, by filth, dung, ashes, rubbish, or any other matter or thing whatsoever, being laid or thrown upon any turnpike road, or upon any open common or waste land within eighty feet of the centre thereof^(h), and to dispose of the same for the benefit of such road, in case the owner thereof shall neglect to remove the same within twelve hours after notice in writing, signed by any two trustees, or the surveyor of such road, given to such owner for that purpose, or in case the owner is not known, then after a like notice affixed for three days on the nearest turnpike gate; and to turn any watercourses, sinks, or drains running into, along, or out of any turnpike road, or any part thereof, to the prejudice of the same, and to open, scour, and cleanse any watercourses or ditches adjoining to any turnpike road, and make the same as deep and large as he shall think proper and necessary, in case the owners or occupiers of the adjoining lands shall neglect to open,

Water-
courses and
drains may
be turned.

upon a highway, however, or placing a person on a footway to distribute bills, is not an indictable nuisance: *Rex v. Sermers*, 1 Burr. 516; *Rex v. Gill*, 1 Stra. 190; but a continued obstruction, as by a stage-coachman standing plying for passengers, or a waggon loading and unloading daily in a public street, are nuisances: *Rex v. Cross*, 3 Camp. 224; *Rex v. Russell*, 6 East, 427. And a plea of obstruction will not be excused on the ground of its being necessary for carrying on the party's business: *Rex v. Jones*, 3 Camp. 230; or even that the encroachment was for the repairing or rebuilding a house, if such encroachment be unreasonable: *Bush v. Steinman*, 1 Bos. & P. 404. For these encroachments, &c. the usual remedy is by indictment: *Hubert v. Grove*, 1 Esp. 148. But in many cases, where individual injury is sustained, a common action may be supported: *Greasley v. Codling*, 2 Bing. 263, 9 Moore, 489, &c. The prohibition of nuisances, &c. in the above section, therefore, as well as those mentioned in subsequent sections, many of which are re-enactments of parts of the old General Turnpike Act, or of provisions already existing in local Acts, are only in affirmance of the common law. As to nuisances on highways not turnpike, see 5 & 6 W. 4, c. 50.

(h) As to what is deemed the centre of the road, see sect. 124.

scour, or cleanse such watercourses or ditches after seven days' notice in writing given for that purpose; and the charges thereof, and of removing any annoyances, to be settled by any one or more justices of the peace of the county or place where such part of the turnpike road shall lie, shall be reimbursed to the said surveyor by such owners or occupiers, and the same shall be recovered in such manner as the penalties and forfeitures are hereinafter directed to be recovered⁽ⁱ⁾; and if, after the removal of any of the said annoyances, any person shall again offend in the like kind, every such person shall, for very such offence, forfeit and pay any sum not exceeding five pounds.

DRAINS, &c

Penalty for a second offence, 5*l*.

CXV. And be it further enacted, That, in all cases where any gutter, drain, sink, sewer, or underdrain made or hereafter to be made under or at the sides or near any turnpike road, shall be used as well for the conveyance of the water from such turnpike road, as for conveying water, filth, or other matters from the houses or premises of the inhabitants of any town, hamlet, village, street or place, and no specific mode of repair, or persons liable to the expenses of maintaining the same, shall be appointed, the expense of maintaining and repairing such gutter, drain, sink, sewer, or underdrain, shall be borne and defrayed equally or in proportions by the trustees or commissioners of such turnpike road, and the inhabitants of the town, hamlet, village, street, or place using the same; and in order to ascertain the proportion, and recover such expenses, the surveyor of the turnpike road under or at the sides or near to which such gutter, drain, sink, sewer, or underdrain shall be situated, shall, as often as shall be requisite, repair the same, and shall then make out an account of the costs and expenses of such reparation, and produce the same to any two or more justices of the peace acting for the county or place where

Expenses of repairing drains, &c., in towns, to be defrayed equally between the trustees and the inhabitants.

(i) Sect. 141, &c. See Forms of Notices and Conviction, Appendix, Nos. 70, 71. See also s. 6, of the Public Health Act, 11 & 12 Vict. c. 123.

**HEDGES,
TREES, &c.**

An account of the expense of repairs to be laid before two justices, who shall proportion the amount to be paid by the parties.

such gutter, drain, sink, sewer, or underdrain, or so much thereof as shall be repaired, shall lie: and it shall and may be lawful for the said justices, and they are hereby authorised and empowered, to examine the accounts and statements to be produced to them, and to inquire as to the persons using such gutter, drain, sink, sewer, or underdrain, and to proportion the amount to be paid by the trustees or commissioners of the turnpike road, and by the inhabitants and persons using such gutter, drain, sink, sewer, or underdrain respectively, and to fix and ascertain the amount of such proportion as they the said justices shall deem just and reasonable to be paid by the said several parties respectively; and if any person or persons shall neglect or refuse to pay the sum directed by the said justices to be paid by him, her, or them, the same shall be levied by distress and sale of the goods and chattels of the person or persons so neglecting or refusing, by a warrant under the hands and seals of any two or more justices of the peace acting for the county or place where such person or persons shall reside.

Owners of adjoining lands to cut the hedges and branches of trees obstructing the road.

CXVI. And be it further enacted, That the owners or occupiers of the land next adjoining to every turnpike road shall cut, prune, and trim their hedges (*k*) to the height of six feet from the surface of the ground, and also cut down, prune, or lop the branches of trees, bushes, and shrubs growing in or near such hedges or other fences adjacent thereto (such fences, trees, bushes, or shrubs not being in any garden, orchard, plantation, walk, or avenue to a house, nor any tree, bush or shrub, being an ornament or shelter to a house, unless the same shall hang over the road or any part

(*k*) The "road" is only the surface over which the public has a right to pass, and not the hedges and fences on each side, which the owners of the land are bound to repair, although the trustees of a turnpike road made such fences, and for several years repaired them: *Rex v. Commissioners of Llandilo*, 2 T. R. 232; and see note on sect. 114, p. 105.

thereof in such a manner as to impede or annoy any carriage or person travelling thereon), in such manner that the turnpike road shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such turnpike road to the damage thereof; and that if such owner or occupier shall not, within ten days after notice (*l*) given by the surveyor for that purpose, cut, prune, and trim such hedges, or cut down, prune, or trim such branches of trees, bushes, and shrubs in manner aforesaid, it shall and may be lawful for the said surveyor and he is hereby required to make complaint thereof to some justice of the limit where such turnpike road shall lie, who shall summon the occupier of such lands before him to answer the said complaint; and if it shall appear to such justice that such occupier has not complied with the requisites of this Act in that behalf, it shall and may be lawful for such justice, upon hearing the surveyor and occupier of such land or his agent (or in default of his or her appearance, upon having due proof of the service of such summons), and considering the circumstances of the case, to order such hedges to be cut, trimmed, and pruned, and such branches of trees, bushes, and shrubs to be cut down or pruned, or trimmed in such manner as may best answer the purposes aforesaid (*m*); and if the occupier of such lands shall not obey such order within ten days after it shall have been made, and he or she shall have had due notice thereof, he or she shall forfeit the sum of two shillings for every twenty-four feet in length of such hedge which shall be so neglected to be cut, trimmed, and pruned, and the sum of two-pence for every tree, bush, or shrub which shall be so directed to be cut down, pruned, or trimmed; and the surveyor, in case of such default made by the occupier, shall and he is hereby required to cut, prune, and trim such hedges, and to cut down, prune, or trim such branches of trees, bushes, and shrubs, in the manner directed by

HEDGES,
TREES, &c.

If neglected for ten days, surveyor may complain to a justice, who may order the same to be done, on pain of forfeiting 2s. for every 24 feet in length of the hedge, and 2d. for every tree, &c.

Hedges, &c., may be trimmed at the expense of defaulters

(*l*) See Form of Notice, Appendix, No. 72.

(*m*) See Form of Order, Appendix, No. 73.

HEDGES,
TREES, &c.

such order, and such occupier shall be charged with and pay, over and above the said penalties, the charges and expenses of doing the same, or in default thereof such charges and expenses shall be levied, together with the said forfeitures, upon his or her goods and chattels, by warrant from a justice of the peace, in such manner as is authorised for forfeitures incurred by virtue of this Act(n).

Time of cutting hedges and trees.

CXVII. Provided always, and be it further enacted, That no person or persons shall be compelled, nor any surveyor permitted, by virtue of this Act, to cut or prune any hedge at any other time than between the last day of September and the last day of March.

Persons making encroachments on the roads by reducing the breadth or narrowing the limits thereof; or making drains across, or otherwise injuring the roads; or turning the plough on the

CXVIII. And be it further enacted, That if any person shall make or cause to be made any dwelling-house or other building, or any hedge or other fence on or at the sides of any turnpike road, in such manner as to reduce the breadth or confine the limits thereof, or shall fill up or obstruct any ditch at the side thereof; or shall make or cause to be made any dwelling-house or other building, or any hedge or other fence on any common or waste land on the side or sides of any turnpike road(o), within the distance of thirty feet, if within

(n) See form of Conviction, Appendix, No. 74. Upon 13 G. 3, c. 78, s. 63, the Court decided that the surveyor was not authorised to remove any fences but such as were standing on the highway, although the breadth of the road was less than prescribed by the Act: *Lowen v. Kaye*, 4 B. & C. 3; and see *Witham Navigation Company v. Padley*, 4 B. & Ad. 69. And where a surveyor subtracted a portion of, and premanently injured, a bank by the road-side, although it might be an improvement at the time, he was held liable to a reversioner of the land for the injury: *Alston v. Scales*, 9 Bing. 3.

(o) Where a surveyor was charged with arching over a drain contrary to the consent of trustees under a local Act, which made such consent necessary, he was held liable to the penalty, although the work was not done by his own hands. "He was the person, emphatically, who caused this to be done by the directions he gave. It is not necessary that he should have done any part of the work

three miles of any market town, or, if beyond that distance, within twenty-five feet from the middle or centre thereof(*p*); or shall make any drain, gutter, sink, or watercourse across, or otherwise break up or injure the surface of any turnpike road, or of any part thereof; or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands shall turn his or their plough or harrow in or upon any land or ground within the distances aforesaid from the middle or centre of any turnpike road made or to be made, or make any other encroachment on any turnpike road within the distances aforesaid from the middle or centre thereof(*q*); every person so offending shall forfeit, for every such offence, forty shillings to such person as shall make information of the same; and it shall be lawful for the trustees or commissioners who have the care of any such road, to cause such dwelling-house or other building, hedge, ditch, or fence, drain, sink, watercourse, gutter, or other encroachment, to be taken down or filled up, or where any ditch shall be filled up or obstructed, to be opened and cleansed at the expense of the person or persons to whom the same shall belong; and it shall and may be lawful for any one or more justice or justices of the peace of the county where such offence shall be committed, upon proof thereof to him or them made upon oath, to levy, as well the expenses of taking down or filling up or cleansing such dwelling house or other building, hedges, ditches, drains, or other encroachments as aforesaid, as the several and respective penalties hereby imposed, by dis-

ENCROACH-
MENTS, &c.

ground with-
in a certain
distance of
the road,
shall forfeit
40s. to the
informer.

Encroach-
ments to be
removed.

himself in order to render him liable. Where one man directs another to commit a misdemeanor, and the other does so accordingly, the two are equally guilty:" *Lyndhurst, C. B., Woodward v. Cotton*, 1 C. M. & R. 44.

(*p*) On the construction of statutes prohibiting buildings from being built within a certain distance of the road, see *Rex v. Gregory*, 5 B. & Ad. 565.

(*q*) As to the ownership of the slips or pieces of land at the sides of the road, see note on 4 G. 4, c. 95, s. 75; and see sect. 124 of this Act, as to what shall be deemed the centre.

**DIRECTION
POSTS, &c.**

Milestones
and direction
posts to be
erected.

Names of
towns and
villages to be
put up at the
entrance, and
stones to
mark the
boundaries of
parishes.

Penalty for
defacing
them, not ex-
ceeding 10*l*.

Extending
time for wa-
tering roads.

tress and sale of the offender's goods and chattels, rendering the overplus (if any) to the owner on demand(*r*).

CXIX. And be it further enacted, That the said trustees or commissioners shall cause stones or posts to be set up or placed in or near the sides of every turnpike road, at the distance of one mile from each other, denoting the distance of any and every such stone or post from any town or place, and also such direction post at the several roads leading out of any such road, or at any crossings, turnings, or terminations thereof, with such inscriptions thereon denoting to what place or places the said roads respectively lead, of such height or size, and to be erected in such situations as they the said trustees or commissioners shall think proper; and also to cause to be painted in legible characters, on some wall or board at the entrance of every town or village, the name of such town or village, and shall also cause stones to be put up marking the boundaries of parishes where such boundaries shall cross any turnpike road, and from time to time to repair or renew such stones, posts, and boards, and keep and continue legible the inscriptions on such stones, posts, walls, and boards respectively; and if any person or persons shall wilfully break, cut down, pull up, or damage any such posts, stones, or boards, or shall obliterate, deface, spoil, or destroy all or any of the letters, figures, or marks which shall be inscribed or painted thereon, or on any such walls, and be thereof convicted before any justice of the peace for the county, city, or place where such offence shall be committed, by the confession of the party, or by the oath of one credible witness, such person or persons so offending shall forfeit and pay any sum not exceeding ten pounds for every such offence(*s*).

CXX. And whereas, by several Acts of Parliament relating to particular turnpike roads, power is given to

(*r*) See Form of Conviction, Appendix, No. 76.

(*s*) The property in milestones is vested in the trustees, see sect. 60, *ante*, p. 49. See further as to injuries to road property, 4 G. 4, c. 95, s. 72; 7 & 8 G. 4, c. 80, s. 14; 5 & 6 W. 4, c. 50, s. 72.

the trustees to water the roads during certain months in the year, and to take additional tolls on account of the said watering; and the time specified in such Acts has been found in many instances too limited to afford to the public all the advantages which might be derived from watering the said roads; be it further enacted, That, wherever an Act or Acts has or have been passed to enable the trustees of any turnpike road or roads to water the same or any part thereof, and to take an additional toll for such watering during a limited time in the said Act or Acts specified, it shall and may be lawful for the trustees of the said road or roads, at any general meeting held for that purpose, to order that such part of the said road or roads as by the local Act or Acts relating to the same is allowed or directed to be watered, and a certain additional toll to be taken for such watering, shall be watered, and the said additional toll for watering the same may be demanded and taken for any time between the first day of March in every year and the first day of November following; and the said trustees shall have and they are hereby authorised to exercise and enforce all the powers, authorities, remedies, and penalties, for collecting the said additional tolls for watering the roads during the time aforesaid, as they now by law have for any other tolls which may be demanded and collected on the said roads.

WATERING
ROADS.
—

CXXI. And be it further enacted(*t*), That, if any person or persons shall ride upon any footpath or causeway by the side of any turnpike road, made or set apart for the use or accommodation of foot-passengers, or shall lead or drive any horse, ass, mule, swine, or cattle or carriage of any description, or any wheelbarrow, truck, or sledge, or any single wheel of any waggon, cart, or carriage apart therefrom, upon any such footpath or causeway(*u*), or shall cause any injury or damage to

Penalty on persons committing nuisances, by riding on footpaths, or damaging bridge, &c.;

(*t*) Most of the offences enumerated in this section are nuisances at common law. See note on sect. 114, p. 105.

(*u*) By 7 & 8 G. 4, c. 24, s. 16, the penalty is to attach, whether the footpaths, &c., have been made by the trustees or not.

NUISANCES.	<p>be done to the same, or the hedges, posts, rails, or fences thereof, or shall wilfully pull down or damage any bridge(x), wall, or any other building or erection made by the trustees or commissioners of any turnpike road, or repaired or repairable by them; or shall haul or draw, or cause to be hauled or drawn upon any part of such turnpike road, any timber, stone, or other thing, otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other thing, which shall be carried principally or in part upon wheeled carriages, to drag or trail upon such road to the prejudice thereof; or shall use any tipstick, joggle, or other instrument for the purpose of retarding the descent of any cart or other carriage down any hill, in such manner as to destroy, injure, or disturb the surface of any turnpike road; or shall, in or upon such road, or by the side or sides thereof, or in any exposed situation near thereto, kill, slaughter, singe, scald, burn, dress, or cut up any beast, swine, calf, lamb, or other cattle; or if any person driving any horse or other beast on the said road, carrying any iron bar or rod, basket or pannier, or any other matter or thing, shall place such bar or rod, basket or pannier, matter or thing, so that the same or any of them shall project more than thirty inches from the side of such horse or other beast, or so as in any manner to obstruct or impede the passage of any person, or any horse, beast, or carriage travelling along such turnpike road; or if any hawker, higler, gipsy, or other person or persons travelling with any machine, vehicle, cart, or other carriage, with or without any horse, mule, or ass, shall pitch any tent, booth, stall, or stand, or encamp upon or by the sides of any part of any turnpike road; or if any blacksmith, or other person occupying a blacksmith's shop situate near any turnpike road, and having a window or windows fronting the said road, shall not, by good and close shutters every evening after it be-</p>
by drawing timber, &c.;	
by injuring the road, &c.;	
by slaughtering of cattle;	
by obstructing passage of travellers;	
by hawkers, &c., pitching tents or booths;	
by lights of blacksmiths' shops;	

(x) Wilfully and maliciously destroying or damaging a public bridge is felony: 7 & 8 G. 4, c. 30, s. 13; and see further, as to malicious injuries to road property, the same Act, s. 14, and 4 G. 4, c. 95, s. 72, &c.

comes twilight, bar and prevent the light from such shop shining into or upon the said road; or if any person or persons shall make or assist in making any fire or fires commonly called bonfires, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever, within eighty feet of the centre of such road; or bait or run for the purpose of baiting any bull, or play at football, tennis, fives, cricket, or any other game or games upon such road, or on the side or sides thereof, or in any exposed situation near thereto, to the annoyance of any passenger or passengers; or if any person shall leave any waggon, wain, cart, or other carriage whatever upon such road, or on the side or sides thereof, without any proper person in the sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same, or shall not place such waggon, wain, or other carriage during the time of loading or unloading the same, or of taking refreshment, as near to one side of the road as conveniently may be, either with or without any horse or beast of draught harnessed or yoked thereto; or shall lay any timber, stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing whatsoever upon such road, or on the side or sides thereof, or the footpaths or causeways adjoining, to the prejudice of such road or footways, or to the prejudice, annoyance, interruption, or personal danger of any person or persons travelling thereon; or shall suffer any water, filth, dirt, or other offensive matter or thing whatsoever to run or flow into or upon such road or footpaths from any house, building, erection, lands, or premises adjacent thereto; or if any person driving any pigs or swine upon such road shall suffer such pigs or swine to root up or damage such road, or the fences, hedges, banks, or copse on either side thereof respectively; or if any person shall, after having blocked or stopped any cart, waggon, or other carriage in going up a hill or rising ground, cause or suffer to be or remain on such road the stone or other thing with which such cart or other carriage shall have

NUISANCES.

by making
bonfires;by baiting
bulls, playing
at foot-ball
or other
games;by leaving
waggons, &c.;by laying
timber, &c.;by running
of water or
filth;

by swine;

by leaving
block stones,
&c.;

NUISANCES. **or by dam-aging lamps.** been blocked or stopped; or if any person or persons shall pull down, damage, injure, or destroy any lamp or lamp-post put up, erected, or placed in or near the side of any turnpike road or toll-house erected thereon, or shall extinguish the light of any such lamp, every person offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby (y).

Surveyors to impound cattle found straying on the roads.

[Repealed by 4 G. 4, c. 95, s. 74, infra.]

Owner to pay 5s. for every beast impounded, beside charges.

CXXII. And be it further enacted, That, if any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found wandering, straying, or lying about any turnpike road, or across any part thereof, or by the sides thereof (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground), it shall and may be lawful for any surveyor of the road where the same shall be found, or any other person or persons whomsoever, to seize and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound of the parish, township, tithing, or place where the same shall be, or in such other place as the trustees or commissioners of the road where the same shall be found shall have provided for that purpose; and the said horse, ass, sheep, swine, or other beast or cattle there to detain, until the owner or owners thereof shall for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay the sum of five shillings to the person impounding the same, together with the reasonable charges and expenses of impounding and keeping the same; and in case the said penalty, charges, and expenses shall not be paid within four days after such impounding, it shall and may be lawful for the surveyor of the road on which the same shall have been seized, to sell or cause to be sold every such horse, ass, sheep, swine, or other beast or cattle; and the money arising from such sale, after deducting the said penalty, and charges and expenses of impounding, keeping, and selling every such horse, ass, sheep, or swine, or other beast or cattle, shall be paid to the person whose property the same so sold shall appear to have been.

Punishing persons guilty of pound-breach.

CXXIII. And be it further enacted, That, in case any person or persons shall release, or attempt to release any cow, horse, ass, swine, or other live stock or cattle which shall be seized for the purpose of being impounded

(y) See Forms of Convictions on this section, Appendix, Nos. 77, 78; and see further as to offences of this description, 4 G. 4, c. 95, s. 72.

under the authority of this Act (z), from the pound or place where the same shall be so impounded, or shall pull down, damage, or destroy the same pound or place or any part thereof, or any lock or bolt belonging thereto, or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release any distress or levy which shall be made under the authority of this Act, until or before such cow, horse, ass, swine, or other live stock or cattle seized or so impounded, or such distress or levy so made, shall be discharged by due course of law, every person so offending shall, upon conviction thereof before any one of his Majesty's justices of the peace for the county or place where the offence shall have been committed, either upon confession of the party or parties offending, or upon the oath of one credible witness, and which oath the said justice is hereby authorised and empowered to administer, be committed by such justice, by warrant under his hand and seal, to the common gaol or house of correction of such of the said counties wherein the said offence shall have been committed, there to remain without bail or mainprize for any time not exceeding three calendar months.

IMPOUNDING
CATTLE.

CXXIV. And whereas doubts may arise as to what is to be deemed the road, or the centre of the road; be it therefore enacted, That where, in this or any other Act of Parliament relating to turnpike roads, any matter or thing is directed or forbidden to be done within a certain distance of the centre of the road, that portion of ground shall be deemed and taken to be the road which has been maintained by the trustees or commissioners as hard road, and repaired with stones, gravel, or other materials used in forming roads, for six months immediately preceding any offence committed against such regulations; and the centre of the road (a) shall

What shall
be deemed
the centre of
the road.

(z) See 4 G. 4, c. 95, s. 75.

(a) The term "road" means the surface over which the public have a right to pass: *Rex v. Commissioners of Llandilo*, 2 T. R. 232. And see further, as to the construction of terms in the Acts, 7 & 8 G. 4, c. 24, s. 19; and 9 G. 4, c. 77, s. 16.

CENTRE OF
ROAD.

No encroachment to be made on the waste lands lying on the side of any road.

be the middle of such hard road, where a line being drawn along the road or a point marked, an equal number of feet of hard road which have been so maintained and repaired as aforesaid for six months before, shall be found on each side of such line or mark: Provided always, that nothing herein contained shall authorise any person or persons to inclose or make any encroachment on any waste lands or grounds lying on the side of any turnpike road, being part of the highway, and over which the king's subjects have been used and accustomed to pass; but every person who shall inclose such waste lands and grounds, or obstruct the right of passage over the same, shall continue and be subject to the same process and penalties as if this Act had not been made (*b*).

Gates to open inwards.

Gates opening outwards to be removed.

CXXV. And be it further enacted, That no door or gate (*c*) of any building, park, paddock, field, or inclosure whatsoever, shall be made to open into or towards any part of any turnpike road, or of any footpath belonging thereto, or be suffered to continue so to open, except the hanging post thereof shall be fixed or placed so far from the centre of any part of such turnpike road, as that no part of such door or gate shall, when open, project over any part of such turnpike road, or any footpath belonging thereto; and the occupier or occupiers of any building, park, paddock, field, or inclosure having any door or gate opening outwards, contrary to the meaning of this Act, shall, within fourteen days after notice (*d*) to him, her, or them given, either personally or in writing, from the surveyor of any turnpike road, cause such door or gate to be hung so that no part of the same when open shall project over any part

(*b*) As to the ownership in these waste lands, &c., see note on 4 G. 4, c. 95, s. 75. See also sect. 118, of this Act, ante, p. 110.

(*c*) As to when gates are nuisances at common law, see note on sect. 114, p. 105. And see 5 & 6 W. 4, c. 50, s. 81; 2 & 3 Vict. c. 45; and as to gates where roads are crossed on a level by railways, 5 & 6 Vict. c. 55, s. 9; and 8 & 9 Vict. c. 20, s. 47.

(*d*) See Form of Notice, Appendix, No. 75.



of such turnpike road, or any footpath belonging thereto; and in default thereof, the surveyor of the said turnpike road is hereby authorised to cause the door or gate to be hung according to the intention of this Act; and the person or persons guilty of such neglect or default shall, upon complaint made to any justice or justices of the peace acting in and for the county or place where such neglect shall appear, and upon conviction upon the oath of one credible witness, pay to such surveyor such sum as the said justice or justices shall direct, to defray the expense of making the alteration and hanging such door or gate, and shall also forfeit and pay a further sum not exceeding forty shillings for his, her, or their neglect therein, to be fixed by and at the discretion of the justice or justices before whom such conviction shall be made.

GATES, &c

Owner to pay the expense of removal, and forfeit not exceeding 40s.

CXXVI. And be it further enacted, That it shall and may be lawful to and for the trustees or commissioners of every turnpike road, at any meeting to be held for that purpose, on ten days' notice in writing of such meeting being affixed upon the turnpike gates on the road, and they are hereby authorised and empowered, from time to time as they shall think fit, to order and direct that in all cases where any waggon or cart shall descend any hill or hills on the said road with either of the wheels locked, a skid-pan or slipper shall be used or placed at the bottom of such wheel during the whole time of its being so locked, in such manner as to prevent the said road from being destroyed or injured by the locking of such wheel; and that it shall and may be lawful for the said trustees or commissioners from time to time to repeal, alter, or renew such order as they shall think necessary; and that whilst any such order so to be made as aforesaid shall be in force, all and every person or persons who shall drive or act as the driver of any waggon or cart down any hill or hills with either of the wheels locked, and without using or having such skid-pan or slipper at the bottom of such wheel in manner aforesaid, shall for every such offence forfeit and pay any sum not exceeding twenty shillings: Provided always, that a copy of

Directing the using of skid-pans or slippers.

Penalty on driver not using them, not exceeding 20s.

SKID-PANS,
WINDMILLS.

such order shall be affixed on all the turnpikes standing on such road, for thirty days at least before the same shall be in force (e).

No windmill
to be erected
within 200
yards of the
turnpike
road, on pe-
nalty of 5*l*.

CXXVII. And be it further enacted, That no person shall hereafter erect or cause any windmill to be erected within the distance of two hundred yards from any part of any turnpike road, under the penalty of five pounds for each and every day such windmill shall continue: Provided always, that nothing herein contained shall be construed to render legal the re-erection or continuance of any windmill in any case where by the common law such windmill shall be a public or private nuisance.

Punishment
of persons
maliciously
destroying
turnpike
gates, &c.

[*Repealed as
to so much as
creates any
felony, by 7
& 8 G. 4, c.
27, s. 1.*]

CXXVIII. And be it further enacted, That if any person or persons whatsoever shall wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy or damage any turnpike gate, or any chain, rail, post, or bar, or other fence or fences belonging to any turnpike gate, or any other chain, bar, or fence of any kind whatsoever, set up or erected, or hereafter to be set up or erected, to prevent passengers passing by without paying any toll directed to be paid by any Act or Acts of Parliament relating thereto, or any house or houses erected or to be erected for the use of any such turnpike gate or turnpike gates, or any weighing engine; or shall forcibly rescue any person or persons being lawfully in custody of any officer or other person for any of the offences before mentioned; that then and in any of the said cases, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be transported to one of his Majesty's plantations abroad for seven years, or in mitigation thereof shall suffer such other punishment as the court may direct, as in cases of petit larceny (f).

Names of
owners to be
painted on
waggon, &c.

[*Repealed by
4 G. 4, c. 95,
s. 14, infra.*]

CXXIX. And for the better discovery of offenders, be it further enacted, That the owner or owners of every waggon, wain, or cart, and also of every coach, post-chaise, or other carriage, let either in the whole or in part to hire, shall paint or cause to be painted in a straight line, upon some conspicuous part of his waggon, wain, or cart, or upon the shafts thereof, and upon the pannels of the doors of all such coaches, post-chaises, or other carriages, before the same shall be used upon any turnpike road, his, her, or their christian and surname, and the place of his, her, or their abode, or the christian and surname and place of abode of the principal partner or owner thereof, in large legible

(e) See Form of Conviction, Appendix, No. 67.

(f) See 7 & 8 G. 4, c. 30, s. 14, and note thereon.

letters not less than half an inch in height, and continue the same thereupon so long as such waggon, cart, coach, post-chaise, or other carriage shall be used upon any such turnpike road; and the owner of every common stage waggon or cart employed in travelling stages from town to town shall, over and above his or her Christian and surname, paint or cause to be painted on the part, and in the manner aforesaid, the following words "common stage waggon" [or cart, *as the case may be*]; and every owner or proprietor of any such waggon, cart, wain, coach, post-chaise, or other carriage as aforesaid, using or allowing the same to be used upon any turnpike road without the names and descriptions painted thereon respectively as aforesaid, or who shall paint or cause to be painted any false or fictitious name or place of abode on such waggon, wain, cart, coach, post-chaise, or other carriage, shall forfeit and pay for every such offence a sum not exceeding five pounds.

CARTS, CARRIAGES, &c.

Penalty for neglect, not exceeding 5*l*.

CXXX. And be it further enacted, That it shall and may be lawful for any one person to act as the driver of two carts on any turnpike road, and for such carts to pass and travel on any turnpike road, being only under the care and superintendence of such single person: Provided always, that such carts when under the care of only one person shall not be drawn by more than one horse each, and the horse of the hinder cart shall be attached by a rein or reins to the back of the cart which shall be foremost; and in case the said horse shall not be so attached, the driver of the said carts shall forfeit the sum of twenty shillings, to be recovered as other penalties are by this Act to be recovered: Provided also, that this enactment shall not extend, or be construed to extend, to carts travelling on any turnpike road within ten miles from the cities of London or Westminster.

One driver may take charge of two carts, provided they are drawn only by one horse each.

Not to extend to carts within ten miles of London.

CXXXI. And whereas numbers of carts and waggons, and frequently more than one, are entrusted to the care of children, who are unable to guide the horses drawing the same; be it therefore enacted, That no cart or waggon travelling on any turnpike road shall be driven by any person or persons who shall not be of the full age of thirteen years, under a penalty not exceeding ten shillings, to be paid by the owner of such cart or waggon.

Children not to drive carts, &c., on penalty of 10*s*.

CXXXII. And whereas many accidents happen, and Drivers of

**DRIVERS
OFFENDING.**

waggons or
carts not to
ride thereon,
unless some
other person
on foot guide
the same;

Drivers of
any carriage
causing hurt
or damage
to others;

or quitting
the road;

or driving
carriage
without own-
er's name;

or not keep-
ing the left
or near side;

or interrupt-
ing free pas-
sage;

great mischiefs are frequently done, upon streets and highways, being turnpike roads, by the negligence or wilful misbehaviour of persons driving carriages thereon; be it therefore enacted, That if the driver of any waggon or cart of any kind shall ride upon any such carriages in any turnpike road, not having some other person on foot or on horseback to guide the same, (such light carts as are usually driven with reins, and are then conducted by some person holding the reins of the horse or horses not being more than two, drawing the same, excepted); or if the driver of any carriage whatsoever on any part of any turnpike road shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such road, or shall quit the road and go on the other side the hedge or fence inclosing the same, or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such turnpike road that he cannot have the direction and government of the horses or cattle drawing the same; or if any person shall drive, or act as the driver of any such coach, postchaise, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name as hereby required (*g*) painted thereon, or shall refuse to discover the true Christian and surname of the owner or principal owners of such respective carriage; or if the driver of any waggon, cart, coach, or other carriage whatsoever, meeting any other carriage, shall not keep his or her carriage on the left or near side of the road, or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his or her care upon such road, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any carriage, or of his Majesty's subjects, on any turnpike road, every such driver so offending in any of the cases aforesaid, and being convict-

(*g*) See 4 G. 4, c. 95, s. 15; and see *Jones v. Owen*, 2 D. & R. 600, where, in connection with an offence of this nature, a magistrate was held to have exceeded his authority.

ed of any such offence, either by his own confession, the view of a justice of the peace, or by the oath of one or more credible witness or witnesses before any justice of the peace of the limit where such offence shall be committed, or where such offender shall be apprehended, shall for every such offence forfeit any sum not exceeding forty shillings, in case such driver shall not be the owner of such carriage; and in case the offender be the owner of such carriage, then any sum not exceeding five pounds; and in either of the said cases shall, in default of payment, be committed to the house of correction for any time not exceeding one month, unless such forfeiture shall be sooner paid; and every such driver offending in either of the said cases shall and may, by the authority of this Act, with or without any warrant, be apprehended by any person or persons who shall see such offence committed, and shall be conveyed before some justice of the peace, to be dealt with according to law; and if any such driver, in any of the cases aforesaid, shall refuse to discover his name, it shall and may be lawful for the justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the house of correction for any time not exceeding three months, or to proceed against him for the penalty aforesaid, by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name (*h*).

DRIVERS
OFFENDING.

the driver, if not the owner, to forfeit 40s.; if he be the owner, 5*l*.

Penalty on driver not discovering his name.

CXXXIII. And be it further enacted, That the trustees or commissioners of any turnpike road, at a public meeting, may, and they are hereby empowered if they think fit, to direct prosecutions by indictment or otherwise, against the offender or offenders, for any nuisance or other offence done, committed, or continued in or upon any of the turnpike roads under their care respectively, or to recover any penalty or forfeiture in-

Trustees or commissioners may direct prosecutions for nuisances, &c.

(*h*) See Form of Conviction, Appendix, No. 66. For further regulations respecting carriages, see sects. 126, 130—132, and 4 G. 4, c. 95, ss. 2, 15, 73, 76, &c.

PROSECUTIONS, &c.

If action be brought against a trustee, evidence of his being appointed and acting sufficient.

curred under the provisions of this or any other turnpike Act, at the expense of the revenues belonging to such turnpike roads, to be allowed by such trustees or commissioners at some subsequent meeting (i).

CXXXIV. And be it further enacted, That, in all cases where any action shall be brought by or against any trustee or trustees, or commissioner or commissioners of any turnpike road, evidence of such trustee or trustees, commissioner or commissioners, having acted as such, together with the Act of parliament by which he or they was or were appointed, or the order, or a copy of the order for his or their appointment or election, in case he or they was or were appointed or elected by the trustees (k) or commissioners, shall be

(i) See further as to prosecutions by trustees, sects. 60, 74; 4 G. 4, c. 95, s. 78, &c. And as to the costs of proceedings against trustees, see 4 G. 4, s. 95, c. 61.

Proof of being a trustee.

(k) The words "in case he was *appointed or elected by the trustees*," apply to cases where there is an appointment or election de facto by the trustees, in contradistinction to an appointment by the Road Act; and, therefore, proof of a party having acted as trustee, and of an order made by the trustees for his appointment or election, was held sufficient to establish the validity of a mortgage signed by such trustee; and this even under a local Act, whereby the appointment of new trustees on death or removal was required to be under the hands and seals of five of the old trustees, and although it was shewn that the order for such appointment was not so made: *Doe dem. Baggaley v. Hares*, 4 B. & Ad. 435, 1 Nev. & M. 237. And so with regard to qualification, if a person be named in a turnpike Act as one of the trustees, and has acted as such, and been recognised as a trustee by the plaintiff, the Judge, at the trial of a cause in which the goodness of his title to act is not the matter directly in issue, will take him to be a good trustee, and will not allow evidence to be given on the part of the plaintiff to shew that the person has not taken the oath prescribed to be taken by trustees of the road before they act as such, although sect. 64, throws the proof of qualification in some cases upon the trustee: *Pritchard v. Walker*, 3 Car. & P. 212. See further as to evidence, 3 G. 4, c. 126, ss. 59, 72, 137; 4 G. 4, c. 95, s. 84; 9 G. 4, c. 77, s. 2, &c.

sufficient proof of his or their being a trustee or trustees, commissioner or commissioners.

PROSECUTIONS, &c.

CXXXV. Provided always, and be it further enacted, That, when and as often as any sum or sums of money shall be directed or ordered to be paid by any justice or justices of the peace, in pursuance of the directions of any Act of Parliament relating to turnpike roads, as or by way of compensation or satisfaction for any materials, costs, damages, spoil, or injury of any nature or kind whatsoever, done or committed by the said trustees or commissioners, or any person or persons acting by or under their authority, and such sum or sums of money shall not be paid by the said trustees or commissioners to the party or parties entitled to receive the same within fourteen days after demand in writing shall have been made, stating the order of such justice or justices, from the clerk to the said trustees or commissioners, or their treasurer, in pursuance of the direction or order made by such justice or justices, then and in such case the amount of such compensation or satisfaction shall and may be levied and recovered by distress and sale of the goods and chattels vested in the said trustees or commissioners by virtue of any such Act, under a warrant to be issued for that purpose by such justice or justices of the peace, which warrant any such justice or justices is and are hereby authorised and required to grant under his hand and seal, or their hands and seals, on application made to him or them for that purpose by the party or parties entitled to receive such sum or sums of money, as or by way of compensation or satisfaction for any such materials, costs, damages, spoil, or injury as aforesaid; and in case any overplus shall remain after payment of such sum or sums of money, and the costs and expenses of hearing and determining the matter in dispute, and also the costs and expenses of such distress and sale, then and in such case such overplus shall be returned on demand to the said trustees or commissioners, or to their treasurer for the time being, as the case may be.

Recovery of money awarded against the trustees.

[Repealed by 4 G. 4, c. 95, s. 70.]

Application of overplus.

CXXXVI. And be it further enacted, That every constable, headborough, or tithingman refusing or neglecting to put this Act into execution, or to account for and deliver any forfeiture or penalty according to the directions of this Act, and every surveyor of any turnpike road, and every toll collector, and all other persons employed or to be employed by any trustees or commissioners appointed or to be appointed for the repairing roads, who do or shall receive salaries or rewards, who shall wilfully neglect, for the space of one week after any offence being to their knowledge committed, to lay such information upon oath before one or more

Penalty on persons employed with salaries refusing to execute the Act, 5L

WITNESSES.

of his Majesty's justices of the peace for the limit wherein such offence was committed, as by this Act is directed, shall, upon due information made upon oath before one of his Majesty's justices of the peace for the said limit, forfeit for every such neglect the sum of five pounds (*l*).

Inhabitants
good wit-
nesses.

CXXXVII. Provided always, and be it further enacted, That no conviction shall be had or made by virtue of this Act, unless upon the view of a justice convicting, or on confession of the party accused, or upon the oath of one or more credible witness or witnesses; and that any inhabitant of any parish, township, or place in which any offence shall be committed contrary to this Act, shall not be deemed an incompetent witness by reason of his or her being an inhabitant of such parish, township, or place; and that any justice of the peace may act in the execution of this Act, notwithstanding he may be a creditor, or a trustee or commissioner for making, repairing, and maintaining the roads on which any offence contrary to this Act shall be committed (*m*).

Penalty on
witnesses not
attending
when sum-
moned, not
exceeding
40s.

CXXXVIII. And be it further enacted, That if any person or persons, after having been paid or tendered a reasonable sum of money for his, her, or their costs, charges, and expenses, shall be summoned as a witness or witnesses to give evidence before any justices of the peace, touching any matter of fact contained in any information or complaint for any offence against any Act of Parliament relating to turnpike roads or this Act, either on the part of the prosecutor or the person or persons accused, shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his, her, or their refusal or neglect, or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses) refuse to be examined upon oath, and give evi-

(*l*) See sect. 139, as to resisting the execution of the Act.

(*m*) See further as to evidence, sects. 59, 72, 134; 4 G. 4, c. 95, s. 84; 9 G. 4, c. 77, s. 2, &c.; 3 & 4 Vict. c. 26; 6 & 7 Vict. c. 85.

dence before such. justice of the peace, then and in either of such cases such person shall forfeit for every such offence any sum not exceeding forty shillings.

TRANSIENT
OFFENDERS,
&c.
—

CXXXIX. And be it further enacted, That, in case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act, or any particular Act made for amending any turnpike road, or shall assault any surveyor, or any collector or collectors of the tolls, in the execution of his or their office or offices, or shall pass through any turnpike gate or gates, rail or rails, chain or chains, or other fence or fences set up or to be set up by authority of parliament, without paying the toll appointed to be paid at such gate or other fence, or shall hinder or make any rescue of cattle or other goods distrained by virtue of this Act, every such person offending therein shall for every such offence forfeit any sum not exceeding ten pounds, at the discretion of the justice or justices of the peace before whom he or she shall be convicted (*n*).

Persons resisting the execution of this Act, or assaulting collectors, or passing gates without paying toll, to forfeit not exceeding 10*l*.

CXL. And whereas offences may be committed against this Act, or other Acts for repairing and maintaining turnpike roads, by persons unknown to the collectors or other officers; be it therefore further enacted, That it shall be lawful for any of the trustees or commissioners of any turnpike road, or their clerk or clerks, or their collectors, surveyors, or other officers respectively, and such other person or persons as he or they shall call to his or their assistance, without any warrant or other authority than this Act, to seize and detain any unknown person or persons who shall commit any such offence or offences, and take him, her, or them before any justice of the peace for the county, district, or place near to the place where the offence or offences

For securing transient offenders.

(*n*) The Court of Queen's Bench were equally divided upon the question, whether this section was applicable to the case where a person passed through a turnpike gate without violence, not paying the toll, though demanded, under an erroneous impression that he was exempt from toll: *Reg. v. Irving*, 12 Q. B. 429.

RECOVERY OF
PENALTIES,
&c.

shall be committed, or such offender or offenders shall be seized and apprehended; and such justice and justices shall and is and are hereby required to proceed and act with respect to such offender or offenders, according to the provisions of this or any other Acts for repairing turnpike roads.

Recovery and
application of
penalties.

CXLI. And be it further enacted, That all penalties, forfeitures, and fines, by this Act inflicted or authorised to be imposed (the manner of levying and recovering and applying whereof is not herein otherwise directed), shall upon proof and conviction of the offences respectively before any justice (*o*) of the peace for the county, riding, or place where the offence shall have been committed (as the case may require), either by the confession of the party offending, or by the oath of any credible witness or witnesses (*p*) (which oath such justice is in every such case hereby fully authorised to administer), be levied, together with the costs attending the information (*q*) and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant (*r*) under the hand and seal of such justice (which warrant such justice is hereby empowered and required to grant), and the overplus (if any), after such penalties, forfeitures, and fines, and the charges of such distress and sale are deducted, shall be returned upon demand unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justice to order (*s*) the offender or offenders so convicted to be de-

(*o*) A justice may act though he be a trustee or creditor. See sect. 64.

(*p*) As to who may be witnesses, see sect. 137.

(*q*) For Forms of Summons, Information, and Conviction, see Schedule, Nos. 17, 18, 19. By 4 G. 4, c. 95, s. 83, the justices may proceed by summons without any information in writing.

(*r*) See Form of Warrant of Distress, Schedule, No. 20.

(*s*) An order to detain an offender may be by parol: *Still v. Watts*, 7 East, 533.

tained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justice, for his or their appearance before such justice, on such day or days as shall be appointed for the return (*t*) of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said justice is hereby empowered to take, by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justice of the peace as aforesaid, and he is hereby authorised and required, by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed (*u*) to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to remain, without bail or mainprize, for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, forfeitures, and fines respectively, when paid or levied, if not otherwise directed to be applied by this Act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the treasurer or treasurers to the trustees or commissioners for repairing and maintaining the road on which such offence shall have been committed, and applied and disposed of for the purposes of such road and of this Act (*x*)

RECOVERY OF
PENALTIES,
&c.
—

CXLII. Provided always, and be it enacted, That it shall and may be lawful for any justice or justices of the peace before whom any person shall be convicted of any offence against this Act, or any Act for making and repairing turnpike roads, if he or

Justices may
mitigate pe-
nalties.

[*Repealed by*
4 G. 4, c. 95,
s. 85, *infra*.]

(*t*) See the Form of Constable's Return, Schedule, No. 21.

(*u*) See the Form of Commitment, Schedule, No. 22.

(*x*) As to the recovery of damages, see 4 G. 4, c. 95, s. 69. As to the limitation of actions, see sect. 147; and as to limitation of time for summary proceedings, see 9 G. 4, c. 77, s. 18.

RECOVERY OF
PENALTIES,
&c.

Prosecutors
may recover
by informa-
tion, or by
action, &c.

they shall think proper, to mitigate or reduce the penalty incurred by such person, so as such reduction or mitigation do not exceed two thirds of the penalty to which such person would be liable under this or any other Act.

CXLIII. And be it further enacted, That every prosecutor or informer shall sue for and recover any forfeiture or penalty imposed by this or any other Act or Acts of Parliament made for erecting turnpikes, or for repairing and amending turnpike roads, in the manner hereinafter mentioned; (that is to say), if the same shall exceed the sum of twenty pounds or upwards, it shall be recoverable by action (y) of debt in any of his Majesty's courts of record, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of —, being forfeited by an Act passed in the third year of the reign of his Majesty King George the Fourth, intituled "An Act [*here set forth the title of this Act, if the offence shall be committed under it, or, An Act, &c. setting out the title of the Act under which the penalty shall be claimed*"]"; and the plaintiff, if he recover in any such action, shall have full costs. Provided that there shall not be more than one recovery for the same offence, and that twenty-one days' notice (z) be given to the party offending

(y) A prosecution for a penalty is the only mode of proceeding against a collector for extortion, no action lies. See 4 G. 4, c. 95, s. 50; and *Robinson v. Pocock*, 11 East, 484.

(z) Now "one month at least:" 5 & 6 Vict. c. 97, s. 4; the time being reckoned exclusively of the day of giving the notice and of the commencement of the action: *Young v. Higgon*, 6 M. & W. 49. To entitle the party to notice of action, he must have *bonâ fide* believed, on reasonable grounds, that the act done by him was in execution or under the authority of the Act: *Cook v. Leonard*, 6 B. & C. 353, 9 D. & R. 339; and see *Towsey v. White*, 5 B. & C. 125, 7 D. & R. 810; and sect. 65. A notice of action under an Act of Parliament against a toll-gate keeper "for demanding and taking of the plaintiff toll for and in respect of certain matters and things particularly mentioned and excepted from the payment of toll in and by a certain Act of Parliament, intituled," &c., was held uncertain and bad: *Freeman v. Line*, 2 Chit. Rep. 672; and see note (c) to sect. 147, ante, p. 133.

previous to the commencement of such action, and that the same be brought and commenced within three calendar months after the offence for which such action is brought shall have been committed; and if such penalty or forfeiture shall not exceed the sum of twenty pounds, and shall be more than five pounds, the same shall be recoverable only by information before a justice of the peace, subject to appeal in manner hereinafter mentioned; and if such penalty or forfeiture shall not exceed the sum of five pounds, the same shall in like manner be recoverable only by information before a justice of the peace, and no writ of certiorari to remove the same shall be allowed.

CXLIV. And be it further enacted, That where any distress shall be made for any sum or sums of money to be levied by virtue of this Act, or any other Act for repairing, amending, or maintaining any turnpike road, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers on account of any default or want of form in any proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers ab initio on account of any irregularity which shall be afterwards done in making the distress; but the person or persons aggrieved by such irregularity may recover the satisfaction for the special damage in an action on the case: Provided always, that no plaintiff or plaintiffs shall recover in any action for such irregularity, trespass, or wrongful proceedings, if tender of sufficient amends^(a) shall be made by or on behalf of the party or parties who shall have committed or caused to be committed any such irregularity or wrongful proceedings, before such action brought; and in case no such tender

Party aggrieved by distress may recover satisfaction for special damages.

Tender of amends.

(a) Under the Highway Act, 13 G. 3, c. 78, in which powers for getting materials were given to surveyors, it was held, that when the surveyors had made a new way to carry materials, and after action brought had paid money into court as amends, the sufficiency of such amends could not be questioned at Nisi Prius, but ought to have been ascertained by the justices of peace: *Boyfield v. Porter*, 13 East, 200.

APPEAL.

shall have been made, it shall and may be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he or they shall see fit; whereupon such proceedings, or orders and judgment, shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court.

Appeal may be made to quarter sessions.

[*Repealed by 4 G. 4, c. 95, s. 86, and new provision substituted, s. 87.*]

CXLV. Provided always, and be it further enacted, That if any person shall think himself or herself aggrieved by anything done by any justice or justices of the peace in pursuance of this Act, except under the particular circumstances hereinafter mentioned, and for which no particular method of relief hath been already appointed, such person, in case the penalty or forfeiture shall exceed the sum of forty shillings, where the appeal is to be against a conviction for a penalty or forfeiture, may appeal to the justices of the peace, at the next general quarter sessions of the peace to be held for the limit wherein the cause of such complaint shall arise, such appellant first giving or causing to be given to such justice, by whose act or acts such persons shall think himself or herself aggrieved, notice in writing of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint arose, and within four days after such notice entering into recognizances before some justice of the peace, with two sufficient sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such quarter sessions, and also to pay the penalty or forfeiture in case the conviction should be affirmed; and each and every justice of the peace, having received notice of such appeal as aforesaid, shall return all proceedings whatever had before him respectively touching the matter of such appeal to the said justices at their general quarter sessions aforesaid, on pain of forfeiting fifty pounds for every such neglect; and the said justices at such session, upon due proof of such notice having been given as aforesaid, and of such recognizance having been entered into in manner before directed, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper, to be levied and recovered as hereinbefore directed, and the determination of such quarter sessions shall be final and conclusive, to all intents and purposes; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or removed by certiorari, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster; any law or statute to the contrary notwithstanding: Provided always, that in case there shall not be time to give such notice, and enter into recognizances as aforesaid, before the next sessions to be

No certiorari.

holden after the conviction of the appellant, then, and in every such case, such appeal may be made to the next following sessions, and shall be there heard and determined.

APPEAL.
—

CXLVI. And be it enacted, That, where any oath or affirmation is by this or any Act relating to any turnpike road required and directed to be made or taken, the justices of the peace of any county or place, or the trustees or commissioners of any turnpike road, (as the case may be), and according to the several jurisdictions herein given to them respectively as aforesaid, shall and they are hereby respectively empowered to administer the same (b).

Power to
administer
oaths.

CXLVII. And be it further enacted, That, if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this Act (c), then and in every such case such action or suit shall be commenced or prosecuted within three months after the fact committed, and not afterwards (d); and the

Limitation of
actions.

(b) See 5 & 6 W. 4, c. 62, substituting declarations in lieu of oaths, and extending this power to such declarations.

(c) Things "done in pursuance of this Act" include all acts done *colore officii*; and apply to all cases in which the defendant has done an act for which he would be civilly liable but for the protection of the statute, and has acted, in so doing, under the belief, founded on reasonable grounds, that he was acting in obedience to the statute. Thus, the demanding and taking of toll is an act done *colore officii*, and in assumpsit against the toll collector to recover back the amount, he is entitled to the protection of the statute: *Waterhouse v. Keen*, 4 B. & C. 200, 6 D. & R. 257. See *Bazing v. Skelton*, 5 T. R. 16; *Jenkins v. Cooke*, 1 Ad. & E. 372; *Huggins v. Wayley*, 15 M. & W. 357. On the same principle, actions for penalties for acting in direct contravention of the statute, are not within the protection: *Charlesworth v. Rudgard*, 1 C. M. & R. 505, 896; *Wright v. Horton*, Holt, N. P. C. 458. Quære, whether justices committing by virtue of this Act, and sued in trespass, are entitled to a verdict, on the ground only that they bona fide believed themselves to be putting the Act into execution: *Stamp v. Sweetland*, 8 Q. B. 13. See the note on sect. 143; and Chitty's Statutes, Vol. ii. p. 241, n. (e); p. 96, nn. (d), (e); and p. 714, n. (f).

(d) See 9 G. 4, c. 77, s. 18. The three months run, not from the

ACTIONS, &c. same and every such action or suit shall be brought in the county or place where the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue, and at the trial thereof give this Act and the special matter in evidence; and if the matter or thing complained of shall appear to have been done under the authority and in execution of this Act, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought and laid in any other county or place than as aforementioned, then the jury shall find for the defendant or defendants; and if the plaintiff shall become nonsuit, or discontinue his or her action after the defendant shall have appeared, or have a verdict against him or her, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall and may recover treble costs^(d), and have the like remedy for recovery thereof as any defendant or defendants hath or have in any cases by law.

General issue.

Treble costs.

Forms in the CXLVIII. And be it further enacted, That the

time of doing the act, but from the time of sustaining the consequent injury: *Sutton v. Clarke*, 6 Taunt. 29, 1 Marsh. 429. Thus, under the 13 G. 3, c. 78, s. 81, giving power to the surveyor of highways to get materials, where so much of the soil near a wall had been dug up as to undermine it, but the falling of the wall did not occur until twelve months afterwards, it was held that the action might be brought within three months after the falling of the wall, notwithstanding the limitation of actions was within three calendar months after the "fact committed:" *Roberts v. Read*, 16 East, 215. See *Lloyd v. Wigney*, 6 Bing. 489. But under a Canal Act, where injury had been occasioned by taking land, it was held that the action for damages must be brought within the limited time after taking the land, if the act complained of had really been done for the purpose contemplated by the statute, though in the prosecution of that purpose the company had been guilty of a misrepresentation towards the occupier: *Lord Oakley v. Kensington Canal Company*, 5 B. & Ad. 138. See *Wordsworth v. Harley*, 1 B. & Ad. 391; and the preceding note.

(d) See now 5 & 6 Vict. c. 97, s. 2.

forms of proceeding relative to the several matters contained in this Act, which are set forth and expressed in the Schedule hereunto annexed, may (e) be used upon all occasions, with such additions and variations only as may be necessary to adapt them to the particular exigencies of the case, and that no objection shall be made or advantage taken for want of form in any such proceedings by any person or persons whomsoever.

SAVING
CLAUSES.

Schedule annexed to be used.

CXLIX. Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed, adjudged, deemed, or taken to extend to the turnpike road called the Commercial Road, or the several branches leading from and out of the same, authorised to be made, repaired, and maintained under and by virtue of five several Acts of Parliament made and passed in the forty-third, forty-fourth, forty-sixth, forty-ninth, and fifty-first years of the reign of his late Majesty King George the Third, for making and maintaining the roads communicating with the West and East India Docks, and for repairing the Cannon-street Road, and for making and maintaining a new road to Barking, and a road from the Romford and Whitechapel Road to Tilbury Fort, in the counties of Middlesex and Essex, and also for making a new branch of road from King David Lane, Shadwell, to the Essex Road at Mile End, in the county of Middlesex, or to affect, encroach upon, vary, alter, or interfere with any of the tolls, weights, or duties created by virtue of the said Acts or any of them, or any of the powers and authorities given to or vested in the trustees acting under or by virtue of the said Acts, or any or either of them.

Act not to extend to the Commercial Road and branches of road leading from and out of the same, authorised to be made and repaired by the Acts of 43, 44, 46, 49, & 51 G. 3.

CL. Provided always, and be it enacted, That nothing herein contained shall be deemed, construed, or taken to extend to an Act passed in the fifty-sixth year

Nor to extend to 55 G. 3, c. 83, for improving the road

(e) Under the 13 G. 3, c. 78, s. 69, a material variation from the form prescribed was held fatal to the proceedings: *Davison v. Gill*, 1 East, 69; but there the word used was *shall*, and not *may*, as in this section; and see *Rex v. Casson*, 3 D. & R. 40; *Barnes v. White*, 1 C. B. 192.

SAVING
CLAUSES.

from Glas-
gow to Car-
lisle.

Parties inter-
ested may
signify their
consent to
any turnpike
bill by affida-
vit.

Justices of
peace or
masters ex-
traordinary
in Chancery
empowered
to take all
such affida-
vits.

of the reign of his late Majesty King George the Third, intituled "An Act for improving the road from the city of Glasgow to the city of Carlisle," or to three several Acts amending the same, passed in the fifty-eighth and fifty-ninth years of the reign of his said late Majesty, and in the first and second years of the reign of his present Majesty (*f*).

CLI. And be it further enacted, That all persons concerned or interested in any bill for making or repairing any turnpike road, or for widening or diverting such road, may signify their consent to the same by affidavit (*g*), taken and authenticated according to the form hereinafter prescribed, unless the committee of either House of Parliament to whom such bill, or the petition of such bill, shall be referred, shall otherwise order.

CLII. And be it further enacted, That it shall and may be lawful for any one or more justice or justices of the peace, or master or masters extraordinary in Chancery (*h*), to take affidavits on oath or affirmation (which oath or affirmation such justice or justices or master or masters extraordinary in Chancery (*h*) is and are hereby authorised and empowered to administer,) (*i*) of the answers that may be given by the owners and occupiers of lands, on applications made to them for their consent to such bill; and every affidavit shall be in the form following, as near as the circumstances of the case will admit:

"A. B. of ——— maketh oath and saith, that he did apply to C. D. who he believes to be the owner of [*set out*

(*f*) As to the metropolitan turnpike roads, see 7 G. 4, c. 142, (local Act).

(*g*) See the following section, and note thereon.

(*h*) "Commissioners to administer oaths in Chancery," 16 & 17 Vict. c. 78.

(*i*) See 5 & 6 W. 4, c. 62, substituting declarations in lieu of oaths, and extending this power to such declarations. And see Forms of Notice and Petition for Private Bill, Appendix, Nos. 37, 38.

the property] being part of the lands through which the intended turnpike road from E. to F. is to be carried, or the alteration to be made (*as the case may be*), and that he received from such owners the answers set forth in the paper hereunto annexed. (Signed) A. B.

PRIVATE
ACTS.
—

Sworn [*or solemnly affirmed*] before me [*as in the other forms hereinbefore set forth*].

As witness my hand and seal.”

And no such affidavit as aforesaid shall be subject or liable to any stamp duty now payable by any Act or Acts of Parliament, or which shall hereafter be imposed, unless specially named and made subject thereto by the Act or Acts of Parliament imposing the same.

CLIII. Provided always, and be it enacted, That proof of the hand-writing of any justice of the peace, or master extraordinary in Chancery (*k*), before whom any such affidavit shall be made as aforesaid, shall be sufficient evidence of the signature of such justice or master extraordinary before any committee of either House of Parliament, without any witness being produced who was present at the time when such affidavit was made, and without a witness being produced to prove that such justice of the peace, or master extraordinary in Chancery (*k*), before whom such affidavit was made, was at the time of making such affidavit a justice of peace or master extraordinary in Chancery (*k*).

Proof of
hand-writing
of justice to
be deemed
sufficient.

(*k*) See note (*h*), *supra*.

THE SCHEDULE

TO WHICH THE ACT REFERS ^(a);

CONTAINING

THE FORMS OF PROCEEDINGS MENTIONED IN THE FOREGOING ACT.

No. 1.

SCHEDULE OF ORDER OF TRUSTEES FOR ERECTING A WEIGHING ENGINE.
FORMS.

[Referred to in sect. 21, p. 17.]

At a meeting of the trustees of the turnpike roads under an Act passed in the — year of the reign of his Majesty King George the — “For [*state the title of the Act*]” held at —, the — day of —.

In pursuance of the powers given to us by an Act passed in the third year of the reign of his Majesty King George the Fourth, for regulating turnpike roads, we do hereby order that an engine proper for the weighing of carriages of the constructions and weights specified in the said Act be forthwith erected at or as near as conveniently may be to the toll-gate or bar now erected upon the said turnpike road at —; and that A. B. the [treasurer, clerk, or] surveyor of the said turnpike road do contract with some proper person [or, with C. D.] [*in case the trustees shall think fit to name the person*] for the making and erecting such engine, and do inspect and take care that the same is properly done; and we do order the gatekeeper at the said gate or bar for the time being to attend the said weighing engine, and carefully to weigh all carriages passing loaded upon the said road, at the place where such engine shall be erected, together with the loading thereof, and to take the several additional tolls or rates for overweight, and give tickets of the weight of such carriages and loading, when

(a) See sect. 148, ante, p. 134, and note thereon; and see the additional forms in the Appendix, post.

required by the driver thereof, and also to enter in a separate book, to be kept by him for that purpose, an account of every carriage so weighed, which shall with the loading exceed the weights allowed by the said Act, and account to us for the money received for all such overweight.

SCHEDULE OF
FORMS.

No. 2.

TABLE OF WEIGHTS ALLOWED IN WINTER AND SUMMER, TO CARRIAGES DIRECTED TO BE WEIGHED (INCLUDING THE CARRIAGE AND LOADING) BY THE ACT OF THE THIRD GEORGE THE FOURTH (b).

	SUMMER.		WINTER.	
	Tons. Cwts.		Tons. Cwts.	
To every waggon with nine-inch wheels -	6	10	6	—
To every cart with nine-inch wheels -	3	10	3	—
To every waggon with six-inch wheels -	4	10	4	—
To every cart with six-inch wheels -	2	15	2	10
To every waggon with wheels of the breadth of four inches and a half - - -	4	5	3	15
To every cart with wheels of the breadth of four inches and a half - - -	2	12	2	7
To every waggon with wheels of three inches - - - - -	3	15	3	5
To every cart with wheels of three inches	1	15	1	10

No. 3.

AGREEMENT BETWEEN TRUSTEES OF DIFFERENT TURNPIKE ROADS FOR ERECTING ONE WEIGHING ENGINE FOR THE USE OF SUCH ROADS

[Referred to in sect. 25, p. 19.]

At a meeting of the trustees of the turnpike roads, under an Act passed in the — year of the reign of King George the — “For [state the principal part of the

(b) This Table (which is referred to in p. 12) is repealed by 4 G. 4, c. 95, s. 89; and the Schedule, No. 1, thereto annexed is to be made use of in its stead.

SCHEDULE OF
FORMS.
—

title of the Act] and also of the trustees of the turnpike roads, under an Act passed in the — year of the reign of King George the — “For [*&c. as above*], held at —, the — day of —, for the purpose of agreeing upon and ordering a weighing engine at the joint expense of the trustees, for the use of the said several turnpike roads, pursuant to the powers given by an Act passed in the third year of the reign of his Majesty King George the Fourth, “For regulating Turnpike Roads.”

It appearing to us, that a weighing engine may be erected at — [*describiny the spot where it can be most conveniently placed*], which will accommodate both the said turnpike roads, according to the true intent and meaning of the said Act: We do therefore order, &c. [*as in the form above mentioned,*] and we do hereby agree and order, that the expenses of making and erecting the said weighing engine, and the sum of — which we do hereby agree and order shall be paid to the toll-gatherer attending the said toll-gate for the time being weekly, for his extraordinary trouble in attending the said weighing engine, shall be advanced and paid by the treasurers of the said several turnpike roads in the shares and proportions following; videlicet, that the treasurer of the — road shall pay [one half], [two third], [three fourth] parts thereof, [*as the trustees shall agree*], and the treasurer of the — road shall pay the remaining [one half], [one third], or [one fourth] part thereof; and that the money to be received at the said weighing engine by forfeitures for overweight shall be paid to the said respective treasurers in the like proportions, and applied by them for the use of the said respective turnpike roads.

(Signed)

No. 4.

NOTICE OF A MEETING OF TRUSTEES FOR ORDERING A
SIDE-GATE TO BE ERECTED.

[*Referred to in sect. 45, p. 37 (c).*]

NOTICE is hereby given, that the trustees of the turnpike roads, under an Act passed in the — year of the reign of King George the — “For [*state the material parts of the*

(c) The section from which this form is referred is repealed, and new regulations substituted, by 9 G. 4, c. 77, ss. 4 & 5.

title of the Act], will meet at the house of — at —, ON SCHEDULE OF FORMS.
 the — day of — next, at the hour of — in the —
 noon, in order to consult about erecting a toll-gate on the
 side of the said turnpike road, at or near a place called
 —, across a certain highway there leading to — (*d*).

Dated the — day of —.

A. B., clerk to the said trustees.

No. 5.

ORDER OF THE TRUSTEES FOR ERECTING A SIDE-GATE (*e*).

[*Referred to in sect. 45, p. 37.*]

At a meeting of the trustees of the turnpike roads, under an Act passed in the — year of the reign of King George the — “For [*here state the material parts of the title of the Act*], being assembled this — of — to enforce the directions of an Act passed in the third year of the reign of King George the Fourth, “For regulating Turnpike Roads,” [*as far as the same respects the erecting of side-gates.*]

In pursuance of public notice given in writing upon all the toll-gates erected on the said road, and also in the — newspapers circulated in this part of the country, for fourteen days now last past; we do order, that a toll-gate shall be erected on the side of the said turnpike road, at or near a place called —, across a certain highway there leading to —, and that the following toll be taken at the said gate; videlicet, [*here insert the particular tolls to be taken at the said side-gate.*]

(*d*) Or for the purpose of ordering the erection of a bar, or the placing of a chain across the said turnpike road at or near —, and also for ordering tolls to be taken at such bar or chain, pursuant to the laws now in force relating to turnpike roads; or as the case may be, stating any other of the purposes mentioned in Form, No. 58, Appendix.

(*e*) This form is not expressly repealed, but will be found insufficient for the purposes of 9 G. 4, c. 77, s. 5, under which toll-gates, &c., are now erected. See another form in the Appendix, No. 58.

SCHEDULE OF
FORMS.
—

No. 6.

NOTICE FOR LETTING TOLLS.

[Referred to in sect. 55, p. 44.]

NOTICE is hereby given, that the tolls arising at the toll-gate [or toll-gates, *if more than one*] upon the turnpike road at —, called or known by the name of the — gate, will be let by auction to the best bidder, at the house of —, at —, on the — day of — next, between the hours of — and —, in the manner directed by the Act passed in the third year of the reign of his Majesty King George the Fourth, "For regulating Turnpike Roads," which tolls produced, the last year, the sum of — above the expenses of collecting them, and will be put up at that sum (*f*). Whoever happens to be the best bidder must at the same time pay one month in advance (if required) of the rent at which such tolls may be let, and give security, with sufficient sureties, to the satisfaction of the trustees of the said turnpike road, for payment of the rest of the money monthly, [or in such other proportions as shall be directed].

A. B., clerk to the trustees of
the said turnpike road.

No. 7.

ORDER OF TRUSTEES FOR REDUCING THE TOLLS.

[Referred to in sect. 43, p. 35.]

At a meeting of the trustees of the turnpike roads, under an Act passed in the — year of the reign of King George the — "For [*&c. state the principal part of the title of the Act*], held at —, the — day of —.

WE, whose names are subscribed, being — or more of the trustees acting under the said Act, being now assembled for reducing the tolls authorised to be taken by and under the said Act, pursuant to public notice given for that purpose in the — newspapers circulated in this part of the country, and also affixed upon all the turnpike-gates erected upon the said turnpike road, for upwards of one calendar month now last past, and having the consent of

(*f*) When the tolls are let in lots, they may be put up at such sums as the trustees think fit: 4 G. 4, c. 95, s. 52.

the several persons entitled to five sixths parts of the money now remaining due upon the credit of the said tolls, this day signified and proved to us, do hereby order, that the tolls granted by the said Act shall, from and after the — day of — be lessened and reduced in the following manner [*here state the several reductions proposed to be made.*]

SCHEDULE OF
FORMS.
—

No. 8.AGREEMENT BETWEEN THE TRUSTEES OF A TURNPIKE ROAD
AND A PERSON LIABLE BY TENURE TO REPAIR SOME PART
OF IT.

[*Referred to in sect. 106, p. 97.*]

At a meeting of the trustees of the turnpike roads, under an Act passed in the — year of the reign of King George the — “For [*state the principal part of the title of the Act*], held at —, the — day of —.

WHEREAS A. B. of — is liable by tenure, &c. [*as the case shall be,*] to the repair of a certain highway leading between — and —, of the length of — yards or thereabouts, and the said highway, being now made turnpike road by virtue of the said Act, will occasion a greater expense to make and keep the same in proper repair than would have been necessary if no such Act had been obtained, and the said A. B. attending this meeting in person [*or, by C. D. his attorney or agent authorised to treat in his behalf*], the said trustees and the said A. B., &c., in pursuance of a power given by an Act passed in the third year of the reign of King George the Fourth, “For regulating Turnpike Roads,” have, in order to put and keep the said road in proper condition and repair, come to the following agreement; videlicet, that the said trustees shall, on or before the — day of — next, pay and allow the sum of — out of the tolls arising upon the said turnpike roads towards putting the said road into proper repair, to be laid out and expended by the surveyor of the said turnpike road, and that the said A. B. shall advance and pay into the hands of the treasurer of the said turnpike road on or before the — day of — next the sum of —, to be also laid out and expended by the said surveyor in the repair of the said road, and that, from and after the — next, the said turnpike road shall be kept in repair by the said trustees out of the said tolls as aforesaid, so long as the said Turnpike Act shall continue, upon the said A. B. paying

SCHEDULE OF
FORMS.
—

into the hands of their treasurer the sum of — upon the — in every year, which the said A. B. doth hereby for himself and his heirs agree to pay accordingly, so long as the said road shall be so repaired by the said trustees as aforesaid.

[Or, if it shall be agreed that A. B. shall keep the road in repair upon having an annual allowance in money or statute duty from the said trustees, let the agreement be varied and adapted to the case.]

No. 9.

MAGISTRATES' SUMMONS (g).

[Referred to in 4 Geo. 4, c. 95, s. 80.]

To the surveyors of the highways of the parish of —, in the county of —.

Upon application made by —, surveyor of the turnpike roads from —, appointed by the trustees for putting into execution an Act of Parliament passed in the — year of the reign of his Majesty King George the —, intituled "An Act —," by order of the trustees for the said road, to us, two of his Majesty's justices of the peace acting in and for the said county; we do hereby summon you, the surveyors of the highways of the parish or place of —, in the said county, to deliver a list to the said —, as such surveyor as aforesaid, at his house, situate in the said county, within — days after the service of this summons, of the names of the several persons inhabitants of the said parish or place, and who are by law subject and liable to do statute work for the present year upon the road situate in the said parish or place, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts or otherwise, and also the amount of the respective sums to be paid; and we the said justices do hereby require you to make such lists of names, in such manner and under such regulations and restrictions as is or are directed by any law or statute now in force and effect for the repair of the public highways.

(g) See note on 4 G. 4, c. 95, s. 80, as to the inutility of the forms relating to statute duty since the Highway Act, 5 & 6 W. 4, c. 50, has come into force.

And in case you shall refuse or wilfully neglect to give in such list as aforesaid, or shall knowingly or wilfully give in a false or imperfect list, you so offending will for every such offence forfeit and be liable to pay a sum not exceeding ten pounds.

Given under our hands and seals this — day of —, in the year of our Lord 185—.

No. 10.

NOTICE TO BE GIVEN TO SURVEYORS OF HIGHWAYS (h).

[*Referred to in 4 Geo. 4, c. 95, s. 80.*]

To the surveyors of the highways of the parish or place of —, in the county of —.

I do hereby give you notice, that the list, delivered by you to me as surveyor of the turnpike road from — to —, in the said county of —, of the names of the several persons who within your said parish or place are by law liable to do statute work for the present year, or to the payment of money in lieu of or as a composition for such statute work, will be laid before two of his Majesty's justices of the peace for the said county, in pursuance of the directions of the Act, passed in the — year of his Majesty King George the —, intituled "An Act —," on the — day of —, at —, in the said county, in order that such two justices may adjudge and determine what part or proportion of the statute work for the said year shall be done upon the said road, and also what proportion of the composition money shall be paid to the trustees of the said road, or to their treasurer. And I do hereby give you further notice, that I shall apply to the justices for [*one-half, one-third, as the case may be*] of the statute duty from your parish for this year, which according to the list delivered by you will be (*say*) — days in the whole — in composition money. If you object to this division, you will in course appear, but if not, the same will be confirmed by the justices, if they think proper.

Dated this — day of —.

— Surveyor of the said turnpike road.

(h) See note on No. 9, p. 144.

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No. 11.

JUSTICES' ORDER, APPORTIONING STATUTE LABOUR (i).

[Referred to in 4 Geo. 4, c. 95, s. 80.]

_____ } WE, two of his Majesty's justices of the
 (to wit.) } peace, acting in and for the county of _____,
 upon application by _____, the surveyor appointed by the
 trustees of the turnpike road from _____ to _____, in the
 said county, in pursuance of an Act of Parliament, passed
 in the _____ year of the reign of his Majesty King George
 the _____, intituled "An Act for _____," do adjudge and de-
 termine that the inhabitants of the parish of _____, in the
 said county of _____, shall do _____ part or proportion of
 the statute work for the ensuing year upon such turnpike
 road in the said parish of _____, being a parish in which
 the said road lies, and that _____ proportion of the money
 received by the surveyor or surveyors of the highways of
 such parish or place, in lieu of or as a composition for such
 statute work, shall be by him or them paid to the said
 trustees of the said turnpike road, or to their treasurer, or
 other person authorised by them to receive the same, on
 or before the _____ day of _____; the names of the several
 persons appointed to do such proportion of the statute
 work on the said turnpike road appear in the schedule to
 this order.

Given under our hands the _____ day of _____, 185—.
 (Signed)

No. 12.

ORDER OF JUSTICES AT A SPECIAL SESSIONS TO TAKE PART
OF THE STATUTE DUTY FROM TURNPIKE ROADS, FOR THE
BENEFIT OF OTHER HIGHWAYS IN THE SAID PARISH,
&c. (j).

[Referred to in sect. 109, p. 101.]

County of _____ } At a special sessions held by the justices of
 to wit. } the peace for the said county, acting in the
 [hundred] of _____, within the said county,
 at _____, on the _____ day of _____.

WHEREAS application and complaint upon oath has been
 made unto us by A. B., surveyor of the [parish, &c.] of

(i) See note on No. 9, p. 144.

(j) See notes on 3 G. 4, c. 126, s. 109, and 4 G. 4, c. 95, s. 80.

—, that the several highways, not being turnpike, within the said [parish, &c.] are very extensive and in bad repair, and that a considerable part of the statute duty arising within the said [parish, &c.] hath been called forth and required to be applied in the repair of certain turnpike roads lying within the said [parish, &c.] which are in good condition, and have a considerable revenue for their support, arising from the tolls collected thereupon; and we having duly summoned C. D., the surveyor of the said turnpike road, to appear before us, to shew cause why the said statute duty called forth and applied by him to the repair of the said turnpike road should not be withdrawn therefrom and applied to the repair of the other highways within the said [parish, &c.], and upon hearing the said C. D., and receiving an account of the revenues and debts of the said turnpike road and of the state and condition of the repair of the said turnpike road and highway respectively; and it appearing to us, upon full consideration had thereupon, that part of the statute duty hitherto employed by the said [parish, &c.] for the repair of the said turnpike road may be conveniently dispensed, without endangering the securities for the money advanced upon the credit of the tolls thereof, and that such statute duty is wanted for the repairs of the other highways within the said parish; we, in pursuance of the power given to us by the Act passed in the third year of the reign of King George the Fourth, "For regulating Turnpike Roads," do order, that, from and after the — day of — next, there shall be only [one] day's statute duty performed by the inhabitants of the said [parish, &c.] upon the said turnpike road within the same, and that the remainder of the statute duty shall be performed upon the other highways within the said [parish, &c.]

[If there are more turnpike roads than one, or the whole statute duty shall be thought fit to be taken away, this form must be varied to fit those cases. The summons to the surveyors will be very easily formed from this order.]

SCHEDULE OF
FORMS.

SCHEDULE OF
FORMS.

No. 13.

CERTIFICATE OF THE ABOVE ORDER TO THE JUSTICES OF THE
PEACE AT THEIR QUARTER SESSIONS (*k*).

[*Referred to in sect. 109, p. 101.*]

I, A. B., clerk to the trustees mentioned in the above order, do hereby certify to the justices of the peace for the [county] [riding] [division] of —, at their general quarter sessions of the peace, that the above is a true copy of the order made by the said trustees for the purposes therein mentioned.

Dated this — day of —.

A. B.

No. 14.

AGREEMENT BY SUBSCRIPTION FOR ADVANCING MONEY TO
MAKE AND REPAIR A TURNPIKE ROAD OR HIGHWAY.

[*See sect. 82, p. 71, and 9 Geo. 4, c. 77, s. 7.*]

WE, whose names are subscribed, do agree to advance and pay the several sums wrote by us opposite to our names, unto —, to be laid out and expended in the making and repairing a certain highway leading from — to —, after an Act of Parliament shall be obtained for making the same turnpike road, upon having the tolls to be collected upon such turnpike road assigned and made over to us as a security for the respective sums so to be advanced by us, together with interest for the same after the rate of — per centum per annum, which sums we do hereby severally agree to pay by instalments, in the following manner, videlicet: one-fourth part thereof on the — day of — next; one other fourth-part, [*&c. &c.*]

Dated this — day of —.

(*k*) See note on No. 12.

No. 15.

WARRANT FROM A JUSTICE OF THE PEACE TO ENTER THE
TOLL-GATE HOUSE, AND REMOVE THE PERSONS THEREIN.*[Referred to in 4 Geo. 4, c. 95, s. 49.]*County of —, } To the [constable], [headborough], [tith-
to wit } ingman] of —, in the said county.

WHEREAS complaint hath been made unto me, A. B., esquire, one of his Majesty's justices of the peace for the said county, upon the oath of —, and other evidence now produced to me, that C. D., who now inhabits the turnpike or toll-gate house at —, upon the turnpike road leading from — to —, and was appointed to collect the tolls there, hath been duly discharged by the trustees of the said turnpike road from any further collecting or receiving the tolls arising at the said gate, and hath refused and still doth refuse to quit the possession of the said house; and the said C. D., having been summoned to appear before me this day, to shew cause why he should not be removed from the said house, and having shewn no sufficient cause for that purpose [*or, not having appeared*], I do hereby authorise and require you, with such assistance as shall be necessary, to enter into the said toll-house or turnpike-house, and buildings belonging thereto, in the day-time, and to remove the said C. D. and all such persons as shall be found therein, together with his and their goods, out of such house and buildings, and to put E. F., the person lately appointed by the trustees to collect such tolls, into the possession thereof, for which this shall be your sufficient warrant.

Given under my hand and seal, this — day of —.

[This form may be varied to suit the case of the widow or family of a deceased collector.]

No. 16.

BOND FROM THE SURVEYOR.

[Referred to in sect. 76, p. 63.]

WE, A. B., surveyor of the turnpike roads, under an Act passed in the — year of the reign of King George the — “For [*state the principal part of the title of the Act*], and C. D. of —, are bound to E. F. of — in the sum

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—

of — pounds, to be paid to the said E. F., his executors, administrators, and assigns; for which payment we hereby bind ourselves severally, and each of our heirs, executors, and administrators.

Dated the — day of —.

The condition of this bond is such, that, if the said A. B., his executors or administrators, shall duly and faithfully account for, apply, and pay all and every the sum and sums of money which hath come or shall come to his hands as surveyor of the turnpike road aforesaid, according to the direction and true intent and meaning of the said Act, and of the statute made in the third year of the reign of his Majesty King George the Fourth, "For regulating Turnpike Roads," then this bond to be void, or else to remain in full force.

[The Bond from the Treasurer will be in the same form.]

No. 17.

SUMMONS FOR ANY PERSON OR PERSONS TO ATTEND A
JUSTICE OR JUSTICES.

[Referred to in 3 Geo. 4, c. 126, s. 141, p. 128; and in 4 Geo. 4, c. 95, s. 83.]

County of —, }
to wit. } To A. B. of —.

WHEREAS complaint and information has been made before me, C. D., one of his Majesty's justices of the peace for the said [county, &c.] by E. F. of —, that &c. *[here state the nature and circumstances of the case, as far as it shall be necessary to shew the offence, and to bring it within the authority of the justice, and in doing that, follow the words of the Act, as near as may be]* these are therefore to require you personally to appear before me *[or, the justices to be assembled at their special sessions to be holden]* at —, in the said [county, &c.] on the — day of — next, at the hour of — in the — noon, to answer to the said complaint and information made by the said E. F., who is likewise directed to be then and there present, to make good the same. Herein fail not.

Given under my hand, this — day of —.

No. 18.

INFORMATION.

[*Referred to in 3 Geo. 4, c. 126, s. 141, p. 128.*]

County of —, } BE it remembered, that, on the —
to wit. } day of —, A. B., of — in the said
county, informeth me —, one of his Majesty's justices
of the peace for the said county, that — of — in the
said county [*here describe the offence, with the time and
place, and follow the words of the Act, as near as may be,*]
contrary to the statute made in the third year of the reign
of King George the Fourth, "For regulating Turnpike
Roads," which hath imposed a forfeiture of — for the
said offence.

Taken the — day of —, before me, A. B.

No. 19.

FORM OF CONVICTION.

[*Referred to in sect. 141, p. 128.*]

County of —, } BE it remembered, that, on the —
to wit. } day of —, in the — year of the reign
of —, and in the year of our Lord —, A. B. is con-
victed before me —, one of his Majesty's justices of the
peace for the said county, for [*here specify the offence, and
when and where committed (l),*] contrary to the form of the
statute made in the — year of the reign of —, intituled
[*here set forth the title of the Act(m)*]; and I do hereby de-
clare and adjudge that the said A. B. hath forfeited, for

(l) In specifying the offence, it is necessary to state the place and county in which it was committed, in order to give the magistrate jurisdiction, by shewing it to have been within the county for which he acts: *Rex v. Hazell*, 13 East, 139, and *Kite & Lane's case*, 1 B. & C. 101; and it is also necessary in all convictions that the substance of the offence should be stated, as an omission of importance will be fatal to the proceedings: *Rex v. Walsh*, 1 Ad. & E. 481.

(m) This must be correctly set forth: *Mills v. Wilkins*, 2 Salk. 609.

SCHEDULE OF the said offence, the sum of — (n), [or, shall be committed to — for the space of —, *as the case may be.*]
FORMS.

Given under my hand and seal the day and year first
above written. C. D.

No 20.

WARRANT TO DISTRAIN FOR FORFEITURE (o).

[*Referred to in sect. 141, p. 128.*]

To the [constable], [headborough], or [tithingman]
of —.

County of —, } WHEREAS A. B., of — in the said
to wit. } county, is this day convicted before me
C. D., esquire, one of his Majesty's justices of the peace in
and for the said county, upon oath of G. H., a credible
witness, for that the said A. B. hath [*here set forth the
offence, describing it particularly in the words of the statute,
as near as may be (p)*] (contrary to the statute in that case
made and provided), by reason whereof the said A. B.
hath forfeited the sum of —, to be distributed as herein
is mentioned, which he hath refused to pay: these are,
therefore, in his Majesty's name, to command you to levy
the said sum of —, by distress of the goods and chattels
of him the said A. B.; and if, within the space of four days
next after such distress by you taken, the said sum, toge-
ther with the reasonable charges of taking and keeping
the same, shall not be paid, that then you do sell the said
goods and chattels so by you distrained, and out of the
money arising by such sale that you do pay one half of
the said sum of — to E. F. of —, who informed me
of the said offence, and the other half of the said sum of
— to I. K., the surveyor of the turnpike road [*describ-
ing it*] where the said offence [*neglect or default*] hap-
pened (p), to be employed towards the repair of the said
road, returning the overplus on demand to him the said
A. B. [the reasonable charges of taking, keeping, and sell-

(n) The conviction need not contain any adjudication of *pay-
ment* of the sum forfeited, or direct to whom payment is to be
made: *Barnes v. White*, 1 C. B. 192.

(o) This must be directed to the proper officer, and should be
executed within his district. See, however, 11 & 12 Vict. c. 43,
s. 10.

(p) See *Barnes v. White*, 1 C. B. 192.

ing the said distress being first deducted]; and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of —, that then you certify the same to me, together with this warrant.

Given under my hand and seal the — day of —.
C. D.

No. 21.

RETURN OF THE CONSTABLE TO BE MADE UPON THE WARRANT OF DISTRESS, WHERE THERE ARE NO EFFECTS.

[*Referred to in sect. 141, p. 128.*]

I, A. B., constable of the [parish, &c.] of —, in the county of —, do hereby certify and make oath, that by virtue of this warrant I have made diligent search for the goods of the within-named —, and that I can find no sufficient goods whereon to levy the within sum of —.

As witness my hand, the — day of —.

A. B.

Sworn before me, the day and year &c.

C. D.

No. 22.

COMMITMENT FOR WANT OF DISTRESS.

[*Referred to in sect. 141, p. 128.*]

County of —, } To the [constable] of —, in the said
to wit. } county, and to the keeper of the common gaol [or, the house of correction] at —, in the said county.

WHEREAS A. B. of —, in the said county, was, on the — day of —, convicted before me, C. D., esquire, one of his Majesty's justices of the peace in and for the said county, upon the oath of E. F., a credible witness, for that he the said A. B. [*here set forth the offence*], contrary to the statute made in the third year of the reign of his Majesty King George the Fourth, "For regulating Turnpike Roads," by reason whereof the said A. B. hath forfeited the sum of —; and whereas, on the — day of —, in the year aforesaid, I did issue my warrant to the [constable] of —, to levy the said sum of — by distress and sale of the goods and chattels of him the said A. B.,

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FORMS.
—

and to distribute the same according to the directions of the said statute; and whereas it duly appears to me, upon the oath of the said [constable], that the said [constable] hath used his best endeavours to levy the said sum on the goods and chattels of the said A. B. as aforesaid; but that no sufficient distress can be had whereon to levy the same: these are therefore to command you, the said [constable] of ——— aforesaid, to apprehend the said A. B., and him safely convey to the common gaol [*or house of correction*] at ———, in the said county, and there deliver him to the keeper thereof, together with this precept: and I do also command you the said keeper to receive and keep in your custody the said A. B. for the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, the ——— day of ———,
in the year of our Lord ———.

C. D.

—
No. 23.

NOTICE OF APPEAL TO THE QUARTER SESSIONS.

[*Referred to in 4 Geo. 4, c. 95, s. 87(q).*]

A. B., Take notice, that I intend to appeal to the next general quarter sessions of the peace, to be holden for the [county, &c.] of ———, against an order [conviction or other proceeding,] (*as the case may be,*) [*particularly specifying the purport of such order, &c., and assigning the grievance and cause of complaint.*]

Dated the ——— day of ———.

C. D.

(q) See the notes on the section referred to.

No. 24—GENERAL STATEMENT OF THE INCOME AND EXPENDITURE OF THE [insert the name of the particular road] between the — day of — and the — day of —.

[Referred to in sect. 78, p. 85. But see the more comprehensive Form in the Schedule to 3 & 4 W. 4, c. 80, post.]

£ s. d.	INCOME.	£ s. d.
labour between the — day of —	By balance in treasurer's hands.....	
roads.....	By amount of rents received from the lessees, or	
labour, between the — day of —	tolls received from the catekeepers between the	
work executed by con- — day of —	— day of —	
done, and the rate as follows [here specify the different amount	as follows [here specify the amount paid by each	
for, or maintenance, — day of — and the —	By amount of statute	
or bridges.....	day of — and the —, as fol-	
if purchased, or for	lows [here specify the amount paid by each	
of quarries.....	parish, hamlet, township, or place].....	
nts of clerks, sur-	By amount of money borrowed on security of tolls	
stationery.....	[if any]	
.....	By incidental receipts	
.....		
.....		
£		£
£		£

GENERAL STATEMENT OF DEBTS AND CREDITS.

£ s. d.		£ s. d.
debt bearing in-	Arrears of rents [or tolls] due, not received, as	
.....	under:—	
.....	Insert the names of the lessees, [or of gages],	
.....	and when due.	
.....	Also insert any other monies due to the trust	
£	on any other account.	£

TOLLS.

4 GEO. IV. CAP. 16.

An Act to explain so much of the General Turnpike Act as relates to the Toll payable on Carriages laden with Lime for the Improvement of Land.

[24th March, 1823.]

3 G. 4, c. 126. WHEREAS an Act was passed in the last session of Parliament, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England:" and whereas doubts have arisen whether, under the provisions of the said Act, lime for improving land, although exempted from toll by several local Acts, may not by the said recited Act(a) be made chargeable with toll: for removing such doubts, be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That nothing in the said Act shall extend or be construed to extend to enable any collector or collectors of tolls authorised to be taken under any local Act or Acts of Parliament for horses or carriages employed, in carrying or conveying lime for the improvement of land, to take or demand any toll for lime as aforesaid, other than such as might have been demanded and taken under the authority of any such local Act, previous to the passing of the said recited Act of the last session of Parliament; any thing in the said Act to the contrary notwithstanding(b).

Recited Act not to authorise collectors of tolls to take toll for lime, unless authorised by some local Act.

(a) See 3 G. 4, c. 126, s. 32, ante, p. 26. See also 4 G. 4, c. 95, s. 23; 5 & 6 W. 4, c. 18; 3 & 4 Vict. c. 51; 13 & 14 Vict. c. 79, s. 3.

(b) If, therefore, any local Act authorises the taking toll for lime, it may still be done; but if the Act contains an exemption in favour of that article, no toll is payable for it: *Gunning on Tolls*, 164.

II. Provided always, and be it further enacted, That, in all cases where any lease or contract shall have been made since the passing of the said recited Act, by any trustees of any turnpike road or roads to or with any collector or collectors of tolls, for letting to farm any tolls to be received or taken upon any such road or roads whereon a toll on lime for improving land was payable or considered to be payable under the said recited Act at the time of making or entering into any such lease or contract, it shall and may be lawful to and for the said trustees to make such fair and reasonable abatement in the rent payable by such collector or collectors during the unexpired residue of such lease or contract as aforesaid, as shall be agreed upon by and between the said trustees and such collector or collectors as aforesaid, or such lease or contract shall, at the expiration of one calendar month after the passing of this Act, either become absolutely void, upon payment, but not otherwise, by such collector or collectors, or his, her, or their heirs, executors, or administrators, of all rent and arrears of rent, or sum or sums of money which shall be due and payable by him, her, or them at and up to the end of the said calendar month.

TOLLS.

Abatement to be made in cases of contract for tolls, where toll on lime was considered to be payable, or contract to be void after the expiration of a month.

III. And be it further enacted, That this Act may be altered, amended, or repealed, by any Act or Acts to be passed in this present session of Parliament.

Act may be amended.

4 GEO. IV. CAP. 35.

An Act to enable Trustees or Commissioners under Acts of Parliament to meet and carry such Acts into Execution, although they may not have met according to the Directions of such Acts. [27th June, 1823.]

WHEREAS it has happened that the trustees or commissioners appointed to carry into execution any Act or Acts of Parliament have not been able to meet on the day appointed by such Act or Acts for carrying the same into execution, by reason that the day appointed for such meeting has been antecedent to the passing of such Act or Acts, whereby the intent of such Act or Acts hath been or may be frustrated: for remedy whereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the

Meetings.

MEETINGS.

Where trustees or commissioners cannot meet on the day appointed by the Act for their first meeting, the day being antecedent to the passing thereof, any three of such trustees, &c., may meet on the fourteenth day after the passing of such Act.

same, That in all cases where the trustees or commissioners appointed by any Act or Acts of Parliament have not been or shall not be able to meet on the day appointed for their first meeting by any such Act or Acts, by reason that the day appointed for such meeting has been or shall be antecedent to the passing of such Act or Acts, it shall and may be lawful for three or more of the said trustees or commissioners appointed to execute such Act or Acts to meet at the place appointed by such Act or Acts for the first meeting of such trustees or commissioners, on the fourteenth day after the passing of such Act or Acts, or of this Act; and every such meeting shall be as good, valid, and effectual as if such trustees or commissioners had met in pursuance of the Act or Acts of Parliament which they are appointed to carry into execution (a).

4 GEO. IV. CAP. 95.

An Act to explain and amend an Act passed in the Third Year of the Reign of His present Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England.
[19th July, 1823.]

REPEAL.

3 G. 4, c. 126.

So much of recited Act, 3 G. 4, c. 126, s. 5, [ante, p. 7], as relates to construction of

WHEREAS an Act was passed in the third year of the reign of his present Majesty, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England:" and whereas the said Act requires to be explained, amended, and some enactments thereof to be repealed: may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority

(a) See further as to meetings of trustees, 3 G. 4, c. 126, ss. 69, 70; 4 G. 4, c. 95, ss. 38—42; 3 & 4 Vict. c. 39.

of the same, That so much of the said recited Act as enacts, that, from and after the first day of January, one thousand eight hundred and twenty-six, if the tire or tires of any wheel or wheels (a)

WHEELS OF
CARRIAGES

the tire of
wheels, re-
pealed.

Construction
of carriage
wheels.

(a) It was early laid down as a principle, that all legislative measures for making and preserving good roads would be of no avail, unless some restrictions were laid upon the wheels of carriages, and the weights which they should be allowed to carry. Hence these subjects occupy a first place in the enactments both of the old and the present General Turnpike Acts; but the regulations have been frequently altered. There seems at one time to have been an idea that carts and waggons could be so constructed as to repair rather than wear out roads; and it was accordingly the object of the 13 G. 3, to convert wheels into rollers, by which it was thought roads could be levelled and consolidated. This notion was subsequently abandoned; and the 3 G. 4, c. 126, ss. 5, 6, adopted the expedient of imposing a toll proportionate to the breadth of the wheels. These regulations having interfered with the regulations of different local Acts, it was found necessary in the following year to pass this Act (4 G. 4, c. 95,) to explain the former provisions, limiting the increased tolls imposed by 3 G. 4, c. 126, to cases where the old General Turnpike Act, 13 G. 3, c. 84, had been acted upon, and diminishing the tolls on $4\frac{1}{2}$ and 6-inch wheels. By 3 G. 4, c. 126, s. 6, the use of waggons and other such carriages having the fellies of the wheels of less breadth than three inches, was prohibited; but that provision is repealed by 4 G. 4, c. 95, s. 3, leaving the additional toll upon carriages of less breadth than $4\frac{1}{2}$ inches still payable. Since the passing of the latter Act, the judgment of the Court has been obtained upon the effect of these various enactments. A local Act, of a date anterior to the 3 G. 4, had imposed a certain toll on carriages with fellies of 6 inches breadth drawn by four horses, and for every horse drawing carriages with fellies of less breadth; and afterwards the trustees, upon the alleged effect of 13 G. 3, c. 84, s. 23, had demanded one half additional toll for horses drawing the latter kind of carriage: it was held, that such increase was legalised by 3 G. 4, c. 126, and not affected by 4 G. 4, c. 95: *Pickford v. Davis*, 1 Bing. N. C. 141. See this case set out at greater length in the Appendix; and see further as to the construction of carriage wheels, &c. 3 G. 4, c. 126, s. 7, &c. An opinion seems to be increasingly prevalent, that all these restrictions on weights and wheels of carriages are unnecessary, if

**WHEELS OF
CARRIAGES.**

of any waggon, cart, or other such carriage, which should be used or drawn on any turnpike road, should not be so made or constructed as not to deviate more than half an inch from the flat or level surface in wheels exceeding six inches in breadth, or more than one quarter of an inch from a flat or level surface in wheels less than six inches in breadth; or in case the several nails of the tire or tires of every such wheel or wheels should not be so countersunk as not to project above one quarter of an inch above the surface of such tire or tires, then and in every such case the owner of every such waggon, cart, or other such carriage should, for every such offence, forfeit and pay the sum of five pounds, and every driver thereof the sum of forty shillings, shall be and the same is hereby repealed.

Nails of the
tires of
wheels of
waggons, &c.,
to be so
countersunk
as not to
project be-
yond a quar-
ter of an inch
above surface
of tires.

II. And be it further enacted, That, from and after the first day of January, one thousand eight hundred and twenty-six, the several nails of the tire or tires of the wheels^(b) of every waggon, wain, cart, or other such carriage used or drawn on any turnpike road, shall be so countersunk as not to project beyond one-quarter of an inch above any part of the surface of such tire or tires; and if any waggon, cart, or other such carriage shall, from and after the said first day of January, one thousand eight hundred and twenty-six, be drawn or used on any turnpike road, with any wheel or wheels made, constructed, or being otherwise than as hereinbefore last described, the owner or owners thereof shall forfeit any sum not exceeding forty shillings, and every driver thereof any sum not exceeding twenty shillings, for each and every time that such waggon, cart, or other such carriage shall be used or drawn on any turnpike road.

Penalty.

So much of
recited Act,
3 G. 4, c. 126,
s. 6, [ante,
p. 8], as

III. And be it further enacted, That so much of the said recited Act as enacts, that, from and after the first day of January, one thousand eight hundred and twenty-six, no waggon or other such carriage should be allowed to travel or be used on any road

not mischievous. Mr. M'Adam, in his evidence before the Committee of the House of Lords, stated that all legislative interference with the size, shape, and breadth of wheels ought to be given up; and in the General Highway Act, 5 & 6 W. 4, c. 50, these regulations are abandoned so far as relates to parish highways.

(b) See note on sect. 1, ante, p. 159.

with the fellies of the wheels thereof of a less breadth than three inches; and from and after the day and year last mentioned, if any waggon or other such carriage having the fellies of the wheels thereof of less breadth than three inches, should be used or drawn on any turnpike road, the owner of every such waggon or other such carriage so used should for every such offence forfeit and pay any sum not exceeding five pounds, and every driver thereof, not being the owner, any sum not exceeding forty shillings, shall be and the same is hereby repealed.

WHEELS OF CARRIAGES.

prohibits the use of carriages with wheels of less breadth than three inches, repealed.

IV. And be it further enacted, That so much of the said recited Act as directs, that where any particular Act or Acts of Parliament then in force, for the making, repairing, or maintaining any turnpike road, should direct an higher rate of toll or tolls on any waggon, wain, cart, or other such carriage, having the fellies of the wheels thereof of less breadth than six inches, and such higher rate is more than the addition which is thereinbefore directed to be taken, such higher rate of tolls, in and by such Act or Acts imposed, should continue to be levied and collected on the said road to which the said Act or Acts should relate, in the proportions there fixed, shall, from and after the first day of January, one thousand eight hundred and twenty-four, be and the same is hereby repealed (c).

So much of recited Act, 3 G. 4, c. 126, s. 8, [ante, p. 9], as requires, that, when there is a scale of tolls, such scale should be continued, repealed.

V. And be it further enacted, That, where the trustees or commissioners of any turnpike road shall not, previously to the passing of the said recited Act, have taken and collected on the road under their care and management the additional tolls on waggons, wains, carts, or carriages having the wheels thereof of less breadth or gauge than six inches from side to side at the bottom or sole thereof, and on the horses or beasts of draught drawing the same, directed to be taken and collected by an Act passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled "An Act to explain, amend, and reduce into one Act of Parliament the general Laws now in being for regulating the Turnpike Roads in that part of Great Britain called England, and for other Purposes," and the particular or local Act or Acts of Parliament in execution whereof the said trustees or commissioners shall act, shall not have provided a scale of tolls applicable to the road under their care and management, such trustees or commissioners shall, from and after the first day of

Where 13 G. 3, c. 84, in respect of tolls to be taken for carriages with wheels of certain description has not been acted on, the tolls shall be payable according to the scale herein specified, after Jan. 1, 1824.

(c) See note on sect. 1, ante, p. 159.

**WHEELS OF
CARRIAGES.**

January, one thousand eight hundred and twenty-four; continue to take, collect, and receive, for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of less breadth or gauge than four and a half inches from side to side at the bottom or sole thereof, or for the horses or beasts of draught drawing the same, the same tolls as are in and by such particular or local Act or Acts payable in respect of such waggons, wains, carts, or other such carriages; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth or gauge of four and half inches, and less than six inches at the bottoms or soles thereof, or for the horses or beasts of draught drawing the same, one-sixth less than the tolls which are or shall be payable for the same; and for every waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of the breadth of six inches or upwards at the bottoms or soles thereof, or for the horse or horses drawing the same, one-third less than the tolls or duties which are or shall be payable for the same by any Act or Acts of Parliament made for making, repairing, or maintaining any turnpike road.

Where there is a scale of tolls adapted to the width of wheels, and additional tolls under 13 G. 3, not collected, the scale of tolls imposed by the local Act to continue.

VI. And be it further enacted, That, where any particular Act or Acts of Parliament now in force, for the making, repairing, or maintaining any turnpike road, shall direct an higher or lower rate of toll or tolls to be collected and taken on any waggon, wain, cart, or other such carriage, or on the horse or horses drawing the same, regulated by or in respect of the greater or lesser breadth of the wheels of such waggon, wain, cart, or other such carriage, and where, in addition to the tolls received under such particular Act or Acts, the additional tolls in respect of the breadth of wheels authorised to be taken by the said Act passed in the thirteenth year of the reign of his late Majesty, shall not have been collected and imposed, it shall and may be lawful for the trustees or commissioners acting in execution of any such particular Act or Acts of Parliament, from and after the first day of January, one thousand eight hundred and twenty-four, to continue

to collect the tolls directed to be taken under the powers and provisions of such Act or Acts of Parliament, in execution whereof they shall act, and they shall not impose the additional tolls authorised and required to be levied by the said recited Act^(d) on waggons, wains, carts, or other such carriages having the fellies of the wheels thereof of less breadth than six inches.

WHEELS OF
CARRIAGES.

VII. Provided always, and be it further enacted, That, in every case where the tolls authorised and empowered to be taken on any turnpike road shall be in the hands of the trustees or commissioners of such road, and not leased or let to farm, but collected on their account, the trustees or commissioners of such road shall, in case such tolls were increased by the provisions of the said recited Act, within fourteen days after the passing of this Act, reduce the said tolls, and fix the amount thereof according to the provisions of this Act; and in case the tolls collected and taken on any turnpike road shall be leased and let to farm, it shall and may be lawful for the trustees or commissioners of such road to compound and agree with the farmer or lessee of the said tolls for reducing the same, and fixing the amount thereof according to the provisions of this Act; and in each of the said cases the provisions of this Act with regard to tolls hereinbefore next mentioned shall then commence and take effect at the time of such reduction, and shall not be postponed to the said first day of January, one thousand eight hundred and twenty-four.

In case the tolls shall not be leased, or if leased by agreement with the lessee, they may be reduced before the 1st of January, 1824.

VIII. And whereas many persons may at the time of passing of this Act be farmers or contractors for the tolls arising or payable on turnpike roads, and for tolls and penalties for overweight, and whose contracts will not expire until after the first day of January, one thousand eight hundred and twenty-four; for remedy whereof, and for protection of such lessees or contractors, be it further enacted, That, in case any lessee or lessees, farmer or farmers, contractor or contractors for any toll or tolls arising or payable on any turnpike road, or for any tolls and penalties for overweight, payable to any trustees or commissioners appointed by virtue of any Act of Parliament for making, repairing, or amending turnpike roads, whose contract will not expire until after the first day of January, one thousand eight hundred and twenty-four, shall by reason of this Act be desirous of being discharged from his, her, or their contract or contracts, so far as regards such tolls arising and payable on any turnpike road, or any tolls and penalties for overweight, and of such his, her, or their desire shall, on or before the first day of September, one thousand eight hundred and twenty three, give notice in writing

Contractors of tolls may be released from their contracts, so far as regards tolls or penalties for overweight, on giving notice to the treasurer or clerk of the trustees by September.

(d) 3 G. 4, c. 126, s. 7.

**WHEELS OF
CARRIAGES.**

to the treasurer or clerk of any such trustees or commissioners, then and in every such case all such farmers, lessees, or contractors shall, from and after the said first day of January, one thousand eight hundred and twenty-four, be released and discharged from their respective contracts, so far as the same relate to such tolls arising and payable on any turnpike road, or to such tolls or penalties for overweight; and all and every such contracts shall thenceforth cease and be null and void as to the residue of the term or time then to come and unexpired therein, so far as such contracts relate to such tolls arising and payable on any turnpike road, or to such tolls and penalties for overweight; any thing in such leases or agreements to the contrary notwithstanding.

New contracts may be made with contractors.

IX. Provided also, and be it enacted, That, in case any such lessee or lessees, farmer or farmers, contractor or contractors, shall give such notice of determining his, her, or their contract, as hereinbefore mentioned, then and in every such case it shall be lawful for such trustees or commissioners, if they think fit, to make any new contract or contracts with such lessee or lessees, farmer or farmers, contractor or contractors, or to make any compensation to him, her, or them, in respect of such tolls payable on any turnpike road, or of the said tolls or penalties for overweight, or to cause the said tolls, and the tolls or penalties for overweight, to be relet on a day and at a place to be by them appointed, of which one month's notice at least shall be given, and thereupon to proceed to relet the same, and to relet the same for the best price they may then be enabled to obtain for the same, without being compelled to put up the said tolls arising and payable on such road, or the said tolls or penalties for overweight, at the sum at which they last let, or to have any other meeting for the letting thereof; any law or custom to the contrary notwithstanding.

No exemption by former Acts to be claimed, unless carriages with 4½ inch fellies are used.

X. And be it further enacted, That no person shall, by virtue of the said recited Act, or this or any other Act or Acts of Parliament, have, claim, or take the benefit or advantage of any exemption from toll or part of tolls, or penalties for overweight, or to pay less toll for or in respect of any waggon, wain, cart, or other carriage, or the horses or beasts drawing the same, and carrying any particular kind of goods, than other carriages of the like nature carrying other goods ought to pay, unless such waggon, wain, cart, or other carriage, in respect of which the exemption shall be claimed, shall have the sole of the bottom of the fellies of the wheels thereof of the breadth or gauge of four and half inches or upwards (other than and except carts and carriages employed in carrying corn or grain in the

straw, hay, straw, fodder, dung, or lime for the improvement of land, or other manure, or any plough, harrow, or implements of husbandry only), but that the tolls imposed by any Act, together with the additional tolls required to be taken for or in respect of every such waggon, wain, cart, or other carriage, having the sole or bottom of the fellies of the wheels thereof of less breadth or gauge than four and half inches as aforesaid, and for or in respect of horses or beasts of draught drawing the same, and the additional tolls or penalties for overweight (except as before excepted), shall be paid in the same manner, to all intents and purposes, as if no exemption or less toll had been enacted or allowed, and as fully as all other waggons, wains, carts, and carriages, and horses drawing the same, ought respectively to pay, which are not entitled to any exemption from toll in the whole or part, or to pay a less toll than other waggons, wains, carts, and carriages; any law or statute to the contrary notwithstanding(e).

WEIGHTS OF
CARRIAGES.
—

XI. And be it further enacted, That so much of the said recited Act as enacts, that it shall and may be lawful for the trustees or commissioners of any turnpike roads from time to time, as they shall see convenient, to compound and agree, for any term not exceeding three years at any one time, with all or any of the inhabitants of the several parishes, hamlets, or places to or through which such road may lead or pass, for the passing of their horses, cattle, or carriages through all or any of the toll-gates to be erected on such road, or on the sides thereof; which composition shall be paid yearly in advance, and in default thereof the composition or agreement with the person or persons making such default shall be thenceforth void; and all such composition money shall be paid and applied in such manner as the tolls are directed to be paid and applied: Provided always, That no such composition shall extend to the additional tolls for overweight hereinbefore directed to be taken, but all such additional tolls shall be demanded and received notwithstanding any composition for tolls; shall be and the same is hereby repealed.

So much of recited Act, 3 G. 4, c. 126, s. 42, [ante, p. 35], for compounding and paying composition in advance, repealed.

XII. And be it enacted, That so much of the said recited Act as enacts, that it shall not be lawful for the trustees or commissioners of any turnpike road, their lessee or lessees, collector or collectors, or other officers, to make any composition for any additional tolls or duties for or in respect of the overweight, or in

So much of recited Act, 3 G. 4, c. 126, s. 19, [ante, p. 15], prohibiting

(e) See note on sect. 1, ante, p. 159.

**COMPOSITION
FOR TOLLS.**

—
composition
for over-
weight, re-
pealed.

any other manner as to the weight which any waggon, wain, cart, or carriage shall carry or weigh, any law to the contrary thereof notwithstanding; but that every contract and agreement for such composition for overweight shall be null and void to all intents and purposes whatsoever; and every lessee, collector, or other officer entering into or agreeing to any such composition, and every person or persons with whom any such composition or agreement shall be made or entered into, shall, for every such composition or agreement, and for every abatement of toll for overweight in consequence thereof respectively, forfeit and pay the sum of fifty pounds to any person or persons suing for the same; shall be and the same is hereby repealed.

Compositio
may be made
for tolls for
one year.

XIII. And be it further enacted, That the trustees and commissioners of every turnpike road may and they are hereby empowered from time to time, as they shall see convenient, to compound and agree for any term not exceeding one year at any one time, with any person or persons, for the tolls payable for any horses, cattle, or beasts, or carriages, passing through any of the turnpikes or toll-gates of the road under their care and management, and collected and taken under the authority of the particular Act or Acts in execution of which the trustees or commissioners making such composition shall act, or of the said recited Act or this Act (*f*).

So much of
recited Act,
3 G. 4, c. 126,
s. 129, [ante,
p. 120], as
to painting
names on
waggons, &c.,
repealed.

XIV. And be it further enacted, That so much of the said recited Act of the third year aforesaid as enacts, that the owner or owners of every waggon, wain, or cart, and also of every coach, post-chaise, or other carriage, let either in the whole or in part to hire, shall paint or cause to be painted in a straight line upon some conspicuous part of his waggon, wain, or cart, or upon the shafts thereof, and upon the pannels of the doors of all such coaches, post-chaises, or other carriages, before the same shall be used upon any turnpike road, his, her, or their Christian and surname, and the place of his, her, or their abode, or the Christian and surname and place of abode of the principal partner or owner thereof, in large legible letters, not less than half an inch in height, and continue the same thereupon so long as such waggon, cart, coach, post-chaise, or other carriage shall be used upon any such turnpike road: and the owner of every common stage waggon or cart employed in travelling stages from town to town, shall, over and above his or her Christian and surname, paint or

(*f*) As to reducing tolls, see 3 G. 4, c. 126, s. 43, ante, p. 37; sect. 20 of this Act; and 2 & 3 Vict. c. 46.

cause to be painted on the part and in manner aforesaid the following words, 'Common stage waggon' (or 'cart,' as the case may be); and every owner or proprietor of any such waggon, cart, wain, post-chaise, or other carriage as aforesaid, using or allowing the same to be used upon any turnpike road without the names and descriptions painted thereon respectively as aforesaid, and who shall paint or cause to be painted any false or fictitious name or place of abode on such waggon, wain, cart, coach, post-chaise, or other carriage, shall forfeit and pay for every such offence a sum not exceeding five pounds, shall be and the same is hereby repealed.

CARTS,
WAGGONS, &c.

XV. And for the better discovery of offenders, be it further enacted, That the owner or owners of every waggon, wain, or cart, or other such carriage, shall, from and after the first day of October, one thousand eight hundred and twenty-three, paint or cause to be painted in one or more straight line or lines upon some conspicuous part of the right or off side of his, her, or their waggon, wain, or cart, or other such carriage, or upon the off-side shafts thereof, before the same shall be used on any turnpike road, his, her, or their Christian and surname, and the place of his, her, or their abode, or the Christian and surname and place of abode of the principal partner or owner thereof, at full length, in large legible letters not less than one inch in height, and continue the same thereupon so long as such waggon, wain, cart, or other such carriage shall be used upon any turnpike road; and every owner and proprietor of any waggon, wain, or cart, or other carriage, who shall use or allow the same to be used on any turnpike road, without the names and descriptions painted thereon as aforesaid, or who shall paint or cause to be painted any false or fictitious name or place of abode on such waggon, wain, or cart, or other carriage, shall forfeit and pay for every such offence a sum not exceeding five pounds (*g*).

For discovery
of offenders,
names of
owners to be
painted on
waggons, &c.,
in the man-
ner herein
mentioned.

Penalty 5l.

XVI. And be it further enacted, That if any wagon or cart, built or constructed to be, and usually

Loaded carts
used on rail-
ways and

(*g*) See Form of Conviction, Appendix, No. 65. For other offences relating to carriages, see 3 G. 4, c. 126, ss. 130—132, &c.

CARTS,
WAGGONS, &c.

—
tramroads
not to be
drawn on
turnpike
roads.

Penalty.

Exemptions
from toll not
to extend to
the tolls for
overweight,
unless such
tolls are also
specially
exempted.

used on any railway or tramroad (*h*), shall be drawn or pass loaded on any turnpike road, out of and away from such railway or tramroad, for the distance of more than one hundred yards, the owner or proprietor of every such waggon or cart shall forfeit and pay the sum of forty shillings, and the driver thereof, not being the owner, the sum of twenty shillings for each and every time such waggon or cart shall be so drawn and pass.

XVII. And be it further enacted, That, in case where any exemption from toll shall be claimed or allowed under the provisions of the said recited Act or this Act, or any other Act or Acts of Parliament for repairing and maintaining any turnpike road, such exemption shall not extend to or be allowed for the additional tolls imposed by the said recited Act (*i*), and directed to be taken for every hundred weight, of one hundred and twelve pounds to the hundred, which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine, over and above the weights in and by the said recited Act allowed to each of them respectively, unless the waggon, wain, cart, or other such carriage, in respect of which the exemption shall be claimed, shall likewise be by the said recited Act or this or some other Act or Acts, specially exempted from such additional tolls for overweight; but in all cases (where not specially exempted) the said additional tolls shall be paid, and only the original toll allowed.

Provision in
3 G. 4, c. 126,
s. 10, [ante,
p. 10], as to
coaches, &c.,
repealed.

XVIII. And whereas it is by the said recited Act enacted, that nothing therein contained relating to the breadth of the wheels of carriages, or to the tolls payable thereon, shall extend or be construed to extend to any chaise marine, coach, landau, berlin, barouche, sociable, chariot, calash, hearse, break, chaise, curricule, gig, chair, or taxed cart, market cart, or other cart for the conveyance of passengers or light goods or articles: And whereas

(*h*) As to when railways and railway carriages are to be considered as nuisances in reference to the adjacent highways, see *Rex v. Morris*, 1 B. & Ad. 441; *Rex v. Pease*, 4 B. & Ad. 30, 1 N. & M. 690; and see Appendix.

(*i*) 3 G. 4, c. 126, s. 15, ante, p. 13.

the said provision has been found inconvenient; be it therefore enacted, That the said provision shall be, and the same is hereby repealed. CARTS,
WAGGONS, &c

XIX. And be it further enacted, That nothing in the said recited Act or this Act contained relating to the breadth of the wheels of carriages, or to the regulations of weight, or to the tolls payable in respect of the wheels, or of the weight of carriages (*k*), shall extend or be construed to extend to any chaise marine, coach, landau, berlin, barouche, phaeton, sociable, chariot, calash, hearse, break, chaise, curricule, gig, chair or taxed cart, or any cart not drawn by more than one horse or two oxen. Breadth of
wheels, or
regulations
as to weight,
&c., not to
extend to
coaches, &c.

XX. And be it further enacted, That the trustees or commissioners of the several turnpike roads within ten miles of the cities of London and Westminster, and the borough of Southwark, may and they are hereby empowered, at any meeting or meetings to be held for the purpose (of which meeting or meetings, and the purposes thereof, fourteen days' notice shall be given), to lower the several additional tolls by the said recited Act (*l*) directed to be taken for overweight, in such manner as to them shall seem fit and convenient, and from time to time to take such reduced tolls for overweight as shall be fixed and agreed on at such meeting or meetings. Trustees or
commission-
ers within 10
miles of Lon-
don may re-
duce tolls for
overweight.

XXI. And be it further enacted, That the regulations of weight in the said recited Act or this Act mentioned and provided, shall not extend to any waggon, wain, cart or other carriage carrying only one block, plate, roll, or vessel of iron or other metal, or compounded of any two or more metals, cast, wrought, or united in one piece (*m*). Regulations
of weight not
to extend to
one piece of
metal.

XXII. And be it further enacted, That so much of the said recited Act as enacts, that nothing therein contained shall ex- 3 G. 4, c. 126,
s. 34 [ante, p.
30], repealed.

(*k*) See 3 G. 4, c. 126, ss. 12—23; 4 G. 4, c. 95, ss. 5, 6, 10, 20, 21, &c.

(*l*) 3 G. 4, c. 126, s. 15, ante, p. 13.

(*m*) See 3 G. 4, c. 126, s. 15, ante, p. 13.

EXEMPTIONS
FROM TOLL.

— —

tend or be construed to extend so as to exempt any waggon, cart, or other carriage laden with dung, compost, or manure for manuring land, or any horse or other beast drawing the same, from any toll imposed in respect thereof by virtue of any local Act or Acts now passed, whereby such toll has been imposed for the maintenance of the roads therein respectively mentioned, shall be and the same is hereby repealed.

Carriages laden with dung not to be exempted from toll when charged by any local Act.

XXIII. And be it further enacted, That nothing in the said recited Act or this Act contained shall extend or be construed to extend to exempt any waggon, wain, cart, or other carriage, laden with dung, compost, or manure for manuring land, or any horse or other beast drawing the same, from any toll imposed in respect thereof by any local Act or Acts for making, repairing, and maintaining any particular roads, where in such Act or Acts such dung, compost, or manure shall be specially made subject to toll throughout the whole of such roads, without any local, parochial, or partial exemption (*n*).

Horses and carriages belonging to the Royal Family exempted from toll.

XXIV. And be it further enacted, That no toll shall be demanded or taken by virtue of the said recited Act or this Act, or any other Act or Acts for making or maintaining turnpike roads, for any horses or carriages attending or going to attend, or returning from having attended his Majesty or any of the Royal Family; any thing in any Act or Acts to the contrary notwithstanding (*o*).

So much of 3 G. 4, c. 126, s. 32, [ante, p. 26], repealed, as exempts surveyors of adjoining roads from toll.

XXV. And be it further enacted, That so much of the said recited Act as directs that the surveyor of any turnpike road, when engaged in executing or proceeding to execute, within the limits of any adjoining trust, the powers of the said Act, or any Act for repairing or maintaining any turnpike road, shall be exempt from the payment of toll, shall be and the same is hereby repealed.

General Act not to take away exemptions granted by local Acts.

XXVI. Provided always, and be it enacted, That nothing herein or in the said recited Act contained shall extend, or be deemed or construed to extend, to repeal or take away any exemptions from toll which shall

(*n*) See 3 G. 4, c. 126, s. 32; 4 G. 4, c. 16, s. 1.

(*o*) See a similar exemption, 3 G. 4, c. 126, s. 32.

have been granted or allowed by any Act for making or repairing any turnpike road (p). TOLL TABLES
AND TICKETS.

XXVII. And be it further enacted, That so much of the said recited Act as imposes a penalty or forfeiture on any collector or other person appointed to collect the tolls on any turnpike road, permitting or suffering any waggon, wain, cart, or other carriage to be drawn or pass on any turnpike road, within the view or with the knowledge of such collector or toll-gatherer, or to pass through any toll-gate or bar *drawn by a greater number of horses than by that Act allowed* (q), shall be and the same is hereby repealed. So much of
3 G. 4, c. 126,
s. 52, [ante,
p. 42], as re-
lates to the
number of
horses, &c.,
repealed.

XXVIII. And be it further enacted, That the trustees and commissioners for making or maintaining any turnpike road shall and they are hereby required to put up or cause to be put up, and afterwards to be continued, at every toll-gate within their respective districts, a table painted in distinct and legible black letters, on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing severally the total amount of tolls payable under any particular Act or Acts, and this and the said recited Act (r), and the different sorts of carriages for which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll-gate or bar where such table of tolls shall be affixed; and the said trustees or commissioners shall also provide tickets denoting the payment of toll, and on such several tickets shall be specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered *gratis* to the person paying the toll; and on the production of such ticket at any gate or gates therein mentioned as Trustees to
put up a
table of the
tolls, with
the names of
the gates.

Tickets de-
noting pay-
ment of tolls.

(p) See 5 & 6 Will. 4, c. 18, s. 2.

(q) The enactment here repealed was irrelevant to the other parts of the Act, and appears to have been introduced in mistake.

(r) 3 G. 4, c. 126.

TOLL COL-
LECTORS.

being cleared as aforesaid by the payment of the toll at the gate where such ticket was delivered, the person producing the same shall pass through the gate or gates therein mentioned without paying any further or additional toll *s*).

Provision in,
recited Act,
3 G. 4, c. 126,
s. 53, [ante, p.
42], as to toll
collectors
putting up
their names,
repealed.

XXIX. And whereas it is by the said recited Act enacted, that every toll collector on every turnpike road should place on some conspicuous parts of the fronts of the several toll-houses at which they should respectively be stationed, so that the same should appear to public view, their Christian and surnames, painted in black on a board with a white ground, and each of such letters of such name or names to be at least two inches in length, and of a breadth in proportion, and that such board should be and remain at such toll-house during the whole of the time that the person whose name should be expressed thereon should be on duty thereat; *and every such collector should place on the front of the toll-house or toll-houses at which such collector should be stationed the board thereinbefore directed to be provided, containing the usual name of the turnpike gate where the board should be affixed, and also the list of the tolls payable at such gate, and of the several gates cleared by the payment of toll at the gate where such collector or collectors should be stationed (t);* and if any collector should not place such boards respectively, and keep the same there during the time he should be such collector as aforesaid, or should demand and take a greater or less toll from any person than he should be authorised to do by virtue of the powers of any Act, or of the orders and resolutions of the trustees or commissioners made in pursuance thereof, or should demand and take a toll from any person or persons exempt from the payment thereof, and who should claim such exemption, or should refuse to permit or suffer any person or persons to read, or should in anywise hinder any person or persons from reading the inscriptions on such boards, or should refuse to tell his Christian and surname to any person or persons on being paid the said tolls, or should in answer to such demand give a false name or names, or should refuse or omit to give to the person paying the toll a ticket denoting the payment of the tolls, and naming the toll-gate at which such ticket was delivered, and the toll-gate or toll-gates (if any) freed by such payment, or, upon

(s) See a nearly similar provision, 3 G. 4, c. 126, s. 37; and see 2 & 3 W. 4, c. 124, s. 2, as to tickets for penalties on account of overweight.

(t) The words in italics are omitted in the re-enactment, sect. 30. See the preceding section, requiring toll-boards to be put up by the trustees.

the legal toll being paid or tendered, should unnecessarily detain or wilfully obstruct, hinder, or prevent any passenger or passengers from passing through any turnpike or toll-gate, or should make use of any scurrilous or abusive language to any trustee or commissioner, traveller or passenger, then every such toll collector should forfeit and pay any sum not exceeding five pounds for every such offence: And whereas the said provision has been found inconvenient; be it therefore enacted, That the said provision shall be and the same is hereby repealed.

TOLL COL-
LECTORS.

XXX. And be it further enacted, That every toll collector on every turnpike road shall place or cause to be placed on some conspicuous parts of the fronts of the several toll-houses at which they shall be respectively stationed, and so that the same shall appear to public view, their Christian and surnames, painted in black on a board with a white ground, each of such letters of such name or names to be at least two inches in length, and of a breadth in proportion, and that such board shall be and remain at such toll-house during the whole of the time that the person whose name shall be expressed thereon shall be on duty thereat; and if any collector of the said tolls shall not place such board and keep the same there during the time he shall be such collector as aforesaid, or shall demand and take (u) a greater or less toll from any person than he shall be authorised to do by virtue of the powers of any Act, or of the orders and resolutions of the trustees or commissioners made in pursuance thereof, or shall demand and take a toll from any person or persons who shall be exempt from the payment thereof, and who shall claim such exemption (x), or

Toll collec-
tors to put
up their
names;

taking
greater or
less toll, &c.;

(u) See *Maurice v. Marsden*, 19 L. J., C. P., 153; *Stamp v. Sweetland*, 8 Q. B. 21, post.

A similar penalty is imposed by 3 G. 4, c. 126, s. 55, ante, p. 44, upon the farmer of tolls. See Form of Conviction, Appendix, No. 64, and *Stamp v. Sweetland*, 8 Q. B. 21.

(x) Under a former Act it has been decided, that an indictment for extortion, for taking toll where the party claimed an exemption from toll, could not be sustained where it appeared that the ground for such exemption was not expressly specified

TOLL COL-
LECTORS.

shall refuse to permit or suffer any person or persons to read, or shall in anywise hinder any person or persons from reading the inscriptions on such board, or shall refuse to tell his Christian and surname to any person or persons who shall demand the same on being paid the said tolls, or any of them, or shall in answer to such demand give a false name or names, or shall refuse or omit to give to the person paying the toll a ticket denoting the payment of the tolls, and naming and specifying the toll-gate at which such ticket has been delivered, and the toll-gate or toll-gates (if any) freed by such payment, or, upon the legal toll being paid or tendered, shall unnecessarily detain or wilfully obstruct, hinder, or prevent any passenger or passengers from passing through any turnpike or toll-gate, or shall make use of any scurrilous or abusive language to any trustee or commissioner, traveller or passenger, then and in every such case every such toll collector shall forfeit and pay any sum not exceeding five pounds for every such offence.

obstructing
passengers;

Penalty, 5*l*.

Toll collec-
tors, &c., re-
siding in any
house erect-
ed by the
trustees, not
to gain a set-
tlement.

XXXI. And be it further enacted, That no collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any

to the turnpike-gate keeper at the time the toll was demanded by him; although the nature of the exemption was apparent, from the substance (manure) with which the cart was loaded: *Rex v. Hamlyn*, 4 Camp, 379. By the 50th section, post, p. 191, the procedure by indictment for extortion on the part of a collector is taken away, and a summary conviction before a justice of peace substituted for it; but the express notice required in the above case must, it should seem, still be given to the collector, before he can be liable to the penalty inflicted by this section.

Before this Act, an *action* for money had and received was maintainable against a lessee of tolls who exacted more than ought to be taken for toll: *Parsons v. Blandy*, Wightw. 22; *Lewis v. Hammond*, 2 B. & Ald. 206; *Waterhouse v. Keen*, 4 B. & C. 200.

waggon or other carriages, and no apprentice or servant of any such collector or receiver, shall thereby gain a settlement in any parish or place (y); and that no tolls or penalties for overweight to be taken at any house or weighing machine erected or to be erected, or adjoining to any turnpike road, nor any person whatsoever in respect of such tolls or penalties, or any house or building as aforesaid, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial rate or levy whatsoever (z).

QUALIFICA-
TION OF
TRUSTEES.

XXXII. And be it further enacted, That no person who shall after the passing of this Act be chosen or appointed a trustee or a commissioner by or under any Act or Acts for making or maintaining any turnpike road, shall act as such trustee or commissioner, unless he shall, before he shall act as such (except in administering the oath or affirmation hereinafter mentioned), take and subscribe before one or more of the said trustees or commissioners (who is and are hereby empowered to administer the same) the oath or affirmation following; that is to say,

Trustees to
be sworn.

"I (a), A. B., do swear, [*or*, being one of the people called Quakers, do solemnly affirm], That I will truly and impartially, according to the best of my judgment, execute and perform the several powers, authorities, and trusts reposed in me as a trustee [*or* commissioner] by virtue of an Act passed in the third year of the reign of his Majesty King George the Fourth, intituled 'An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England;' and also an Act passed

Oath.

(y) See 3 G. 4, c. 126, s. 51, ante, p. 41, and note thereon.

(z) See *Rex v. Great Dover Road Trustees*, 5 A. & E. 692.

(a) By 5 & 6 W. 4, c. 62, a declaration is required to be substituted instead of this oath. See the Form of Declaration of Qualification and Office together, Appendix, No. 39; and see, as to the Oath of Qualification, 3 G. 4, c. 126, s. 62, ante, p. 51, &c.

QUALIFICA-
TION OF
TRUSTEES.

in the fourth year of the reign of his said Majesty, intituled [*here set forth the title of this Act*]; and also an Act passed in the ——— year of the reign of his Majesty ———, intituled [*here set forth the title of the Act under which such trustee or commissioner shall claim to act*]. So help me God.'

"[Or, being a Quaker, omit the words 'So help me God.']"

Penalty, 50s.

Proceedings
valid, though
oath omitted
to be taken
under recited
Act.

And if any such person shall act (except as aforesaid) before he shall have taken and subscribed the said oath or affirmation, every such person shall for every such offence forfeit and pay the sum of fifty pounds, with full costs of suit, to any person or persons who shall inform or sue for the same in any of his Majesty's courts of record at Westminster, by action of debt or on the case, bill, suit, or information, wherein no es- soign, protection, or wager of law, or more than one imparlance shall be allowed: Provided always, that no act or proceeding touching the execution of the said Act of the third year of the reign of his present Ma- jesty, or this Act, or any Act for making or main- taining any turnpike road, which shall be done or per- formed by any such person who shall have omitted or neglected to take and subscribe the said oath or affir- mation by this Act prescribed, shall be thereby im- peached or rendered nugatory; but all such proceed- ings shall be as valid and effectual as if such person had taken such oath or affirmation previously to his having acted as such trustee or commissioner as aforesaid (b).

Quakers
making af-
firmation
may act as
trustees.

XXXIII. And be it further enacted, That, if any person being a Quaker shall have been or shall here- after be appointed or elected, by or under any Act or Acts of Parliament for making, repairing, or maintain- ing any turnpike road, a trustee or commissioner of such road, and shall be in other respects qualified ac-

(b) See a similar provision where the trustee is not qualified, 3 G. 4, c. 126, s. 64, ante, p. 53.

according to the provisions of the said recited Act, it shall and may be lawful for such person, on taking and subscribing the affirmations in the said recited Act and this Act contained, to act as a trustee or commissioner in execution of the Act or Acts by or under which such person shall be appointed or elected, without being subject or liable to any penalty or forfeiture by such Act or Acts imposed for acting as a trustee or commissioner, not having taken and subscribed the oaths therein contained.

QUALIFICA-
TION OF
TRUSTEES.
—

XXXIV. Provided always, and be it enacted, That nothing in the said recited Act made in the third year of the reign of his present Majesty, or in this or any other Act contained, shall extend or be construed to extend so as to require any justice of the peace acting for any county to take or subscribe any oath of qualification before he shall act as trustee in the execution of any Act or Acts for making, repairing, or maintaining any turnpike road (c).

Not to ex-
tend to ma-
gistrates
taking oath
of qualifica-
tion as trus-
tees.

XXXV. And be it further declared and enacted, That, where any person shall, previously to the first day of January, one thousand eight hundred and twenty-three, have been duly qualified according to the provisions of, and taken the oath prescribed in that behalf by, an Act passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled "An Act to explain, amend, and reduce into one Act of Parliament the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England, or for other Purposes;" or have been duly qualified according to the provisions of and taken the oath prescribed by any other Act or Acts of Parliament for making, maintaining, or repairing any particular turnpike road, previously to the said first day of January, and shall have been then acting as a trustee or commissioner in the execution of such Act or Acts, it shall and may be lawful for such person to continue to act as a trustee or commissioner under such Act or

Explaining
trustees'
qualification.

13 G. 3, c. 84.

QUALIFICA-
TION OF
TRUSTEES.

Acts, without requalifying, or taking the oath prescribed in and by the said recited Act of the third year of his present Majesty's reign, and although such person may not be possessed of freehold or copyhold lands, tenements, or hereditaments, or be heir apparent to any person possessing the same, to the amount required by the said recited Act (*d*).

Trustee losing his qualification, to become incapable of acting (*e*).

XXXVI. Provided always, and be it enacted, That, if any trustee or commissioner who shall have been acting as such previously to the said first day of January one thousand eight hundred and twenty-three, shall have lost or parted with subsequently thereto, or shall hereafter lose or part with, by sale, assignment, bankruptcy, insolvency, or otherwise, the qualification in respect of which he acted as a trustee or commissioner, and shall not be possessed of the qualification required by the said Act of the thirteenth year of the reign of his late Majesty, or by the Act or Acts in the execution of which such trustee or commissioner shall have acted, every such trustee or commissioner shall therefrom become disqualified and be incapable of any longer acting as a trustee or commissioner; and if any such trustee or commissioner so becoming disqualified shall presume to act in execution of the Act or Acts under which he previously acted, he shall for every such offence incur and be liable to the penalties and forfeitures imposed by the said recited Act of the third year aforesaid, on persons acting as trustees or commissioners not being duly qualified, to be sued for and recovered under the powers and provisions of the said Act.

Trustees having shares in canal com-

XXXVII. And whereas in and by the said recited Act it is amongst other things provided, that no trustee

(*d*) See 3 G. 4, c. 126, ss. 62, 63. The above section, it seems, relates solely to persons who acted as trustees before the 1st of January, 1823.

(*e*) See further as to the qualification of trustees, 3 G. 4, c. 126, s. 62, &c.

or commissioner shall have any share or interest in, or be in any manner directly or indirectly concerned in any contract or bargain for making or repairing, or in any way relating to the road for which he shall act, or for building or repairing any toll-house or toll-gate or weighing engine thereon, or for supplying any materials for the use thereof, nor shall let out for hire any waggon, wain, cart, or other carriage, or any horse, cattle, or team, for the use of any turnpike road for which he shall act as trustee or commissioner, nor by himself, or by any other person for or on his account, directly or indirectly receive any sum or sums of money to his use or benefit, out of the tolls collected on the road for which he shall act during the time he shall be acting as a trustee or commissioner of such road; and in and by the said recited Act any trustee or commissioner offending in any of the cases aforesaid is thereby made liable to pay the penalty of one hundred pounds (*f*); be it further enacted and declared, That no person or persons being a trustee or commissioner, or trustees or commissioners of any turnpike road, shall be liable to and forfeit the said penalty of one hundred pounds, or any other penalty or forfeiture, for or by reason of his or their being only a proprietor or proprietors, or holder or holders of any share or shares in any canal or railway company which shall contract with the trustees or commissioners of the road for which such person or persons shall act as a trustee or commissioner, or trustees or commissioners, for the carriage or conveyance of any materials for the repair of such road.

RESTRICTIONS
ON TRUSTEES.

panies, &c., which shall contract for conveyance of materials for roads, not liable to penalty on account of such contract.

XXXVIII. And whereas it was by the said Act enacted, That the trustees or commissioners for executing any Act for repairing turnpike roads should, from time to time, meet at such time and place as to them should seem convenient, and adjourn themselves to meet at any place and at such time as the said trustees or commissioners should appoint; and at all their meetings the trustees or commissioners should pay and defray their own expenses, except any sum not exceeding ten shillings per diem for the use of

Clause of recited Act, 3 G. 4, c. 126, s. 67, [ante, pp. 57, 58], as to meetings of trustees, repealed.

(*f*) 3 G. 4, c. 126, s. 65. See that section, and the cases, &c. there referred to; and 7 & 8 G. 4, c. 24, s. 1.

MEETINGS.

the room wherein they should meet; and all orders and determinations of the trustees or commissioners in the execution of any such Act should be made at meetings to be held in pursuance thereof, and not otherwise; and that no order or determination should be made, unless the major part of the trustees or commissioners present should concur therein; and that all the powers and authorities thereby in them vested should be done and exercised by the major part of the trustees or commissioners who should be present at meetings to be held by virtue of any such Act; and that a chairman should in the first place be appointed at every meeting, who should have the decisive or casting vote; and that no order or determination at any meeting of the said trustees or commissioners should be revoked or altered at any subsequent meeting, unless notice of the intention to make such revocation or alteration should have been given at a previous meeting, by notice on all the turnpike gates then erected upon such road, twenty-one days at least before such meeting, nor unless such revocation or alteration should be agreed to be made by seven trustees or commissioners at the least: and whereas the said provision has been found inconvenient; be it therefore enacted, That the said provision shall be and the same is hereby repealed.

**Regulations
as to meet-
ings of trus-
tees.**

XXXIX. And be it further enacted, That the trustees or commissioners for executing any Act for making or maintaining any turnpike roads shall and may from time to time meet at such time and place on or near their respective roads as to them shall seem convenient, and may adjourn themselves to meet at any place or places, and at such time or times, as the said trustees or commissioners or the major part of them present at any meeting shall appoint; and at all their several meetings the trustees or commissioners shall pay and defray their own expenses, except any sum not exceeding ten shillings per diem for the use of the room wherein they shall meet; and all orders and determinations of the trustees or commissioners in the execution of any such Act shall be made at meetings to be held in pursuance thereof, or of the said recited Act and this Act, and not otherwise (except in the cases otherwise particularly provided for by the said recited Act (g) or any such Act for making or repairing turnpike roads); and that no order or determination shall be made unless the major part of the

trustees or commissioners present shall concur therein; and that all acts, orders, and proceedings relating to any such Act, or the said recited Act and this Act, which are directed to be had, made, done, or exercised by or before the said trustees or commissioners, and all the powers and authorities vested in them generally, shall and may be had, made, done, and exercised by the major part of the trustees or commissioners who shall be present at the respective meetings to be held by virtue of any such Act or this Act, the whole number present not being less than three (except in such cases where any other number is by any local Act, or the said recited Act or this Act, named for any particular or special purpose); and that all acts, orders, or proceedings had, made, or done by or before such three trustees or commissioners, shall have the same force and effect, and be binding and conclusive on all persons, and to all intents and purposes whatsoever, as fully and effectually as if the same were had, made, done, or executed by or before all the said trustees or commissioners; and that a chairman shall and may in the first place be appointed at every meeting to be held by virtue and for the purposes of any such local Act, or the said recited Act and this Act, who in case of an equal number of votes (including the chairman's vote) shall have the casting or decisive vote; and that no order or determination at any meeting of the said trustees or commissioners, once made, agreed upon, or entered into, shall be revoked or altered at any subsequent meeting, unless notice of the intention to make such revocation or alteration shall have been given by three or more trustees or commissioners, by writing under their hands, to the clerk to the said trustees or commissioners, at a previous meeting holden for the same road, and entered in the book of proceedings of such meeting, and unless notice signed by any two or more trustees or commissioners shall have been affixed on all the turnpike gates then erected upon such road twenty-one days at least before such meeting, nor unless such revocation or alteration shall be agreed to be made by a greater number of trustees or commissioners than concurred in the making of

MEETINGS.

any such order or determination: Provided always, that nothing herein contained, prohibiting or restraining trustees from expending more than ten shillings per diem for the use of the room wherein they shall meet, shall extend to the trustees or commissioners of any road within five miles of the Royal Exchange in London; but such last-mentioned trustees or commissioners may expend any sum not exceeding twenty shillings for the use of such room (*h*).

Clause in re-cited Act, 3 G. 4, c. 126, s. 68, [ante, p. 58], as to meetings of trustees to be held on emergencies, repealed.

XL. And whereas it is by the said Act enacted, that, if at any time it should be thought necessary that the trustees or commissioners of such road should meet before the time to which any meeting may be adjourned, it should be lawful for any two or more of such trustees or commissioners, (or for the clerk to the said trustees or commissioners, by an order in writing, signed by any two or more of them,) to give notice of such earlier meeting in the manner before directed; and all the orders and determinations of the trustees or commissioners at all such meetings should be as valid as if the same had been done at any other meeting of trustees or commissioners: and whereas the said provision has been found inconvenient; be it therefore enacted, That the said provision shall be and the same is hereby repealed.

How meetings on emergencies shall be held.

XLI. And be it further enacted, That, if at any time it shall be thought necessary, for the better execution of any Act of Parliament for making or maintaining any turnpike road, that the trustees or commissioners of such road should meet before the time to which any meeting may be adjourned, it shall and may be lawful for any two or more of such trustees or commissioners (or for the clerk to the said trustees or commissioners, by an order in writing, signed by any two or more of them) to give notice of such earlier meeting by advertisement in some newspaper circulated in the neighbourhood of such road, and affixed on all the turnpike gates then standing on such road, in which notice shall be expressed the time, place, and purpose of such earlier meeting (such time not being less than fourteen days after publication of the said notice); and all the orders and determinations of the trustees or commissioners at all

(*h*) See further as to trustees' meetings, 3 G. 4, c. 126, ss. 69, 70; sects. 41, 42, of this Act; and 3 & 4 W. 4, c. 80, s. 2.

such meetings shall be as valid as if the same had been done at any other meeting of trustees or commissioners held by virtue of the said recited Act or this Act, or the Act under and by virtue of which they shall act as trustees or commissioners: Provided always, that no other business than what shall be specified in such notice shall be transacted at any such meeting.

XLII. And whereas, in and by the said recited Act, all trustees and commissioners of every turnpike road or roads are required to hold a general meeting of the trust for which they shall respectively act on a day to be by them, or any three or more of them, appointed in the months of April, September, and October; be it further enacted, That where, in and by any Act of Parliament, a general annual meeting of the trustees acting in execution of such Act shall be appointed to be held at any other time of the year than in the said months of April, September, or October, and the said trustees shall have held such meetings under the authority of such Act, it shall and may be lawful for such trustees to continue to hold the said general annual meetings at the time mentioned and directed in the Act under and by virtue of which they shall be appointed, instead of in the said months of April, September, or October; anything in the said recited Act contained to the contrary notwithstanding.

Where a local Act has fixed a different time for the annual meeting than that mentioned in recited Act, it may be held on that day.
[Altered by 3 & 4 W. 4, c. 80, s. 2.]

XLIII. And be it further enacted, That the trustees or commissioners for making or maintaining any turnpike road may and they are hereby empowered, by writing under their hands, to appoint such collector or collectors of the tolls arising on such road, and clerk or clerks, treasurer or treasurers, surveyor or surveyors of the said road, and such other officers as the said trustees or commissioners shall think necessary (i); and

Appointing officers, salaries, &c.

(i) See Form of Appointment of an Officer, Appendix, No. 40. If any salary, fee, or emolument appertains to the appointment, it must be stamped. See the Stamp Act, 55 G. 3, c. 184, tit. "Grant:" *Rex v. Lew*, 8 B. & C. 655. By 9 G. 4, c. 77, s. 15, it is provided that officers shall continue to act, notwithstanding the repeal of the local Act under which they were appointed, unless they are removed by the trustees; and a mandamus from the Queen's Bench will lie to compel the trustees of a turnpike road to admit a clerk into his office. See *Rex v. Cheshunt Turnpike Roads (Trustees)*, 5 B. & Ad. 438; *Rex v. Cheadle Highway*

Appointment and liability of officers.

APPOINT-
MENT OF
OFFICERS.

such collectors, clerks, treasurers, surveyors, and other officers, or any of them, from time to time remove, and on removal, death, or resignation of any such collectors, clerks, treasurers, surveyors, or other officers, to appoint others in their stead; and may and are hereby authorised and empowered, out of any of the monies arising

(*Trustees*), 7. Jur. 373. This section must be read in conjunction with sect. 39, which requires notice to be given when it is intended to revoke any order of the commissioners. Therefore, where commissioners had discharged a clerk by a resolution made without such notice, a mandamus was granted to restore him, even though the proper notice had been omitted to be given, owing (as was alleged) to the clerk's misconduct: *Rex v. Wrexham and Denbigh Road Trustees*, 5 A. & E. 581. With respect to the liability of officers, it may be proper in this place to refer to the various decisions which have taken place upon the subject, a collection of which will be found in the Appendix. The principle of these decisions seems to be nearly the same as that applied to trustees, (see 7 & 8 G. 4, c. 24, s. 2, and note thereon,) with this exception, that the agents or officers of trustees may, in some instances, be answerable for damages occasioned by their own negligence, although the act ordered to be done was in itself lawful, and warranted by the powers vested in the trustees. Thus, in the case of *Hall v. Smith*, the surveyor and contractor, employed by certain paving commissioners, were held liable upon an action brought for an injury inflicted through their leaving unguarded, during the night, a trench, over which the plaintiff fell, and broke his leg; notwithstanding the commissioners themselves were acquitted: 9 Moore, 226, 2 Bing. 156; and see *Jones v. Bird*, 5 B. & Ald. 837. But if the act be within the scope of the trustees' authority, and the loss occasioned thereby be the unavoidable consequence of the act to be executed, or if a remedy is given as against the trustees, the officers are not answerable, unless they have made themselves personally liable by a voluntary contract: *Cast Plate Manufacturers v. Meredith*, 4 T. R. 794; *Sutton v. Clark*, 6 Taunt. 29; *Pochin v. Pawley*, 1 W. Bl. 670; *Meriel v. Wymondsold*, Hardw. 205; and see *Wormwell v. Hailstone*, 4 M. & P. 512, 6 Bing. 668. And see further as to the duties, liabilities, and responsibilities of officers, Index, tit. "Officers Surveyors, Treasurers," &c.

on such turnpike road, to allow and pay to the several collectors, clerks, treasurers, surveyors, and other officers, and to such other person or persons as shall be assisting them or any of them, in or about the execution of the Act for making or maintaining such road, and the said recited Act (*l*) and this Act, such salaries, rewards, and allowances for their attendance, care, labour, and services, as such trustees or commissioners shall deem reasonable.

APPOINT-
MENT OF
OFFICERS.

XLIV. Provided always, and be it further enacted, That it shall not be lawful for the trustees or commissioners acting under any Act for making or maintaining any turnpike road to continue or appoint the person or persons who has been or may be appointed their clerk or clerks in the execution of such Act, or the partner of any such clerks, or the clerk or clerks, or other person or persons in the service or employ of any such clerk or clerks, the surveyor or surveyors for the purposes of such Act (*m*); or to continue or appoint any person or persons who has been or may be appointed surveyor or surveyors, or the partner or partners of any such surveyor or surveyors, the clerk or clerks to the said trustees or commissioners; and if any person shall accept both the offices of clerk and surveyor for the purposes of such Act, or if any person, being the partner of any such clerk or clerks, or the clerk or clerks, or other person or persons in the service or employ of any such clerk or clerks, shall accept the office of surveyor, or being the partner of any such surveyor or surveyors shall accept the office of clerk in the execution of such Act, and if any such surveyor shall hold or accept any place or office of profit or trust under the said trustees, other than that of surveyor, every such person so offending shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same, to be recovered, with full costs of suit, in any of

Surveyor and
clerk not to
be the same
person.

Penalty 50*l*.

(*l*) 3 G. 4, c. 126.

(*m*) See 3 G. 4, c. 126, s. 71, and 7 & 8 G. 4, c. 24, s. 4, directing the offices of clerk and treasurer to be kept separate.

SURVEYOR, &c. his Majesty's courts of record at Westminster, by action of debt or on the case, or by bill, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance shall be allowed.

Surveyor not to be concerned in contracts, or sell materials.

XLV. And be it further enacted, That if the surveyor of any turnpike road shall have any part, share, or interest in any contract or bargain for work, materials, tools, or other things, to be done or provided upon, for, or on account of any road or bridge, or any part thereof, under his care and management, or shall upon his own account, directly or indirectly, let to hire any team, or sell or dispose of any timber, stone, or other materials, to be used or employed in making or repairing any such road or bridge, he shall forfeit for every such offence the sum of fifty pounds (*n*).

Penalty 50*l*.

Repeal of clause in recited Act, 3 G. 4, c. 126, s. 77 [ante, p. 64], as to officers accounting (*o*).

XLVI. And whereas it was by the said Act enacted, That all such officers as should be appointed by any trustees or commissioners of any turnpike road, should, as often as required by the trustees or commissioners, render a true, exact, and perfect account in writing of all monies which they should respectively have received and disbursed by reason of their respective offices; and in case any money so received by any such officer should remain in his hands, the same should be paid to the trustees or commissioners; and if any such officer should refuse or neglect to render such account, or to produce the vouchers, or should refuse or neglect to render and give up all books, papers, writings, tools, matters, and things in his custody or power relating to the road for which he should act, it should be lawful for any justice of the peace, upon application made to him for that purpose, to make inquiry concerning any such default as aforesaid in a summary way, and by warrant under his hand and seal to cause such money as should appear to him to be due, to be levied by distress and sale of the goods and chattels of such officer; or if sufficient distress could not be found, or if it should appear to any such justice that such officer should have refused or neglected to give such account, or to deliver up all books, papers, writings,

(*n*) See *Towsey v. White*, 7 D. & R. 810. The surveyor is not responsible to labourers for their wages: *Pochin v. Pawley*, 1 W. Bl. 670; unless by express agreement he renders himself personally liable: *Meriel v. Wymondsold*, Hardw. 205. The treasurer or trustees should be sued.

(*o*) See *Davis v Carey*, 15 Q. B. 418.

tools, matters, and things in his custody or power relating to the execution of his office, such justice should commit him to the house of correction or common gaol, there to remain without bail or mainprize, until he should make and give a true and perfect account, and should have paid the money (if any) remaining in his hands, according to the direction of the trustees or commissioners, or should have compounded with the said trustees or commissioners for such money, or until he should deliver up such books, papers and writings, tools, matters, and things as aforesaid, or have given satisfaction to the trustees or commissioners concerning the same: and whereas the said provision has been found inconvenient; be it enacted, That the said provision shall be and the same is hereby repealed.

SURVEYOR,
&c.
—

XLVII. And be it further enacted, That all such officers as shall have been or shall be appointed by any trustees or commissioners of any turnpike road, shall, from time to time, when thereunto required by the trustees or commissioners, deliver to such trustees or commissioners, or to such person or persons as they shall for that purpose appoint, true, exact, and perfect accounts in writing, under their respective hands, of all monies which they and every of them respectively shall have received to that time, by virtue of any Act, and how much thereof hath been paid and disbursed, and for what purposes, together with the proper vouchers for such payments, and shall pay all such monies as shall remain in their or any of their hands to the said trustees or commissioners, or to such person or persons as they shall appoint to receive the same, and not otherwise, within such time as such trustees or commissioners shall limit or appoint; and if any such officer or person shall refuse or neglect to produce or deliver up such accounts, and the vouchers relating to the same, or shall refuse or neglect to pay the money due on such account within the time or in manner aforesaid, or if any such officer or person shall refuse or neglect to deliver up to the said trustees or commissioners, or to such person or persons as they shall appoint, within ten days after being thereunto required by the said trustees or commissioners, all the books, papers, or writings in his custody or power relating to the execution of any such Act, then and in every or any of the said cases it shall be lawful for any one justice

Officers of
turnpike
roads to ac-
count when
required by
the trustees.

Proceedings
on neglect of
officers to
account.

**OFFICERS
ACCOUNTING.**

If distress be
insufficient,
or if books,
&c., be not
delivered up,
the justice
may commit
the offender.

of the peace for the county, division, or riding in which such road or any part thereof shall be situate, upon complaint made to him by or on behalf of the said trustees or commissioners, and such justice is hereby required, by warrant under his hand and seal, to summon (*p*) such officer or officers, person or persons, to appear before him, and upon his, her, or their appearing, or not being to be found, to hear and determine the matter of such complaint in a summary way, and to settle the said account or accounts, if produced; and if upon confession of the officer or officers, person or persons, against whom any such complaint shall be made, or by the oath or oaths of any witness or witnesses (which oath such justice is hereby empowered and required to administer, without fee or reward); or upon inspection of the said accounts, if produced, it shall appear to such justice that any of the money which shall have been collected or received shall be in the hands of such officer or officers, person or persons, such justice may, and he is hereby authorised and required, on non-payment thereof, by a warrant or warrants under his hand and seal (*q*), to cause such money to be levied by distress and sale of the goods and chattels of such officer or officers, person or persons respectively; and if no goods and chattels can be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the same, or if such officer or officers, or other person or persons, shall not appear before the said justice at the time and place by him appointed for that purpose, unless for some sufficient reason, or, if appearing, shall refuse or neglect to give and deliver to such justice an account or accounts of all receipts and payments as aforesaid, or to produce and deliver up to the said justice the several vouchers and receipts relating to such accounts respectively, or the books, accounts, papers, and writings in his, her, or their custody or power relating

(*p*) See Form of Summons, Appendix, No. 41.

(*q*) See Form of Warrant, Appendix, No. 42.

to the execution of any Act for making or repairing turnpike roads, or the said recited Act or this Act; then and in either of the cases aforesaid, such justice may, and he is hereby authorised and required, by a warrant (r) under his hand and seal, to commit such officer or officers, or person or persons, to the common gaol or house of correction of the county in which such road shall be situate, there to remain without bail or mainprize, in case he or they shall be committed for non-payment of any money received by him or them or in his or their hands, until he shall have accounted for and paid the full amount thereof, or compounded with the trustees or commissioners, and paid such composition in such manner as the said trustees or commissioners shall appoint (which composition the said trustees or commissioners are hereby empowered to make); or in case he or they shall be committed for not delivering any account books, papers, or writings, as aforesaid, until he or they shall have delivered up such books, papers, and writings as aforesaid, or made satisfaction in respect thereof, to the said trustees or commissioners; provided that no person who shall be so committed for want of sufficient distress shall be detained in prison by virtue of this Act for a longer space of time than six calendar months (s).

OFFICERS
ACCOUNTING.

For not exceeding six calendar months.

XLVIII. And whereas it was by the said Act enacted, That it should be lawful for any two or more trustees or commissioners of any turnpike road, upon the death of any collector, to nominate and appoint some other fit person until the next meeting of the trustees or commissioners of such road; and that if any toll collector who should be discharged from his office should refuse to deliver up the possession of the house and appurtenances which he enjoyed in right of his appointment, or if the wife or family of any such toll collector or deputy, who shall die as aforesaid, should refuse to deliver up the possession of such

Repeal of clause in recited Act, 3 G. 4, c. 126, s. 50 [p. 40, supra], as to temporary collectors.

(r) See Form of Commitment, Appendix, No. 43.

(s) See 9 G. 4, c. 77, s. 14, extending this provision to officers appointed under Acts which have been repealed or have expired; and see 3 G. 4, c. 126, s. 47, requiring mortgagees in possession to account.

TOLL
COLLECTORS.

building and appurtenances, it should be lawful for any justice of the peace, by warrant under his hand and seal, to order a constable or other peace officer to enter such house and premises in the day-time, and to remove the persons found therein, together with their goods, out of such house, and to put the new appointed officer into the possession thereof: and whereas it is expedient that the said provision should be repealed; be it therefore enacted, That the said provision shall be and the same is hereby repealed.

Trustees
may appoint
temporary
collectors,
&c., in cer-
tain cases.

XLIX. And be it further enacted, That, upon the death, incapacity, refusal, neglect, or absconding of any collector or receiver of tolls at any turnpike or weighing machine upon any turnpike road, any two or more trustees or commissioners, though not assembled at any meeting, by writing under their respective hands, shall and may nominate and appoint a proper person in his place, to continue until the then next meeting of the trustees or commissioners of such road, in the stead of such collector or receiver as shall so die, become incapable, refuse, neglect, or abscond; which person so nominated and appointed shall have the like power and authority, and be answerable and accountable in the same manner in all respects, as the person who shall die, become incapable, refuse, neglect, or abscond, would have had or been subject to if living; and if any collector or receiver of tolls as aforesaid, who shall be discharged from his office by the said trustees or commissioners, or the wife or widow, or any of the children, family, or representatives of any collector or receiver who shall die, abscond, refuse, or neglect to perform his duty, or be discharged, or any other person having the possession of any toll-house or buildings or weighing machine, erected by virtue of any Act for repairing turnpike roads, or the said recited Act, shall neglect or refuse to deliver up such possession for the space of three days after demand thereof made, and notice in writing given for that purpose, by any two or more of such trustees or commissioners, or by their clerk or treasurer, then and in any of the said cases it shall and may be lawful for any justice of the peace for the county or place

If collector,
&c., refuse
to deliver
possession of
the house,
&c., justices
may remove
them.

where such toll-house or building or weighing machine shall be situate, by warrant (t) under his hand and seal, to order any constable or other peace officer for the same county or place, with such assistance as shall be necessary, to enter such house or building or weighing machine in the day-time, and to remove the person who shall be found therein, together with his, her, or their goods, out of the same, and to put the said trustees or commissioners or any of their officers in the possession thereof.

TOLL
COLLECTORS.
—

L. Provided always, and be it further enacted, That, from and after the passing of this Act, no person or persons who shall ask and take more toll than he is authorised to take by this Act, or any Act now in force, or by any Act hereafter to be made and passed (u), shall be prosecuted by indictment for extortion, or otherwise, nor shall any other proceeding be adopted against such person or persons for the offence aforesaid, other than by prosecuting for the forfeiture and penalty before a justice of the peace, as is herein or by the said recited Act directed (x).

Toll collectors taking more toll than allowed, to be proceeded against before a justice, and not by indictment.

LI. And whereas it was by the said Act enacted, that, on every letting of any tolls, the trustees or commissioners should take of the renter thereof one, two, or more months' rent in advance; and that, in every agreement to be entered into for the letting of any tolls, the rent payable for such tolls should be reserved and made payable monthly or otherwise, and the renter should produce two sufficient sureties for the punctual payment of the rent; and in every case where the terms of such agreement should not be fulfilled, and the rent not be paid when due, but should remain unpaid for three days after becoming due, then the trustees or commissioners making any such agreement should, if they thought fit, declare the agreement void, and re-enter and take possession of any toll-gate or toll-house, and the tolls there collected, and re-let the same, or appoint a collector to collect and receive the same, and to put out and remove the person or per-

Provision in recited Act, 3 G. 4, c. 126, s. 56, [ante, p. 47], respecting rent of tolls, &c., repealed.

(t) See Form of Warrant, Schedule, No. 15.

(u) See 3 G. 4, c. 126, s. 55; 4 G. 4, c. 95, s. 30, and note thereon.

(x) See 3 G. 4, c. 126, s. 121; sect. 30 of this Act, and note (x) thereon, ante, p. 173; and see Form of Conviction, Appendix, No. 64.

**LETTING
TOLLS.**

sons so failing in their agreement: And whereas it is expedient that the said provision should be repealed; be it therefore enacted, That the said provision shall be and the same is hereby repealed.

Tolls may be
let in lots.

LII. And be it further enacted, That it shall and may be lawful for the trustees or commissioners of any turnpike road, under and subject to the directions and provisions of the said recited Act and this Act, to let to farm, or agree to let to farm, all or any part of the tolls of the several gates erected upon their respective roads, and all or any of the said gates, either together and in one lot, or by parcels and in several lots (*y*); and that in case the said trustees or commissioners shall at any time let to farm the said tolls in parcels or lots, it shall be lawful for the said trustees or commissioners to put up each such parcel or lot at such sum as they shall think fit.

Trustees may
appoint some
person to bid
at letting of
tolls.

LIII. And be it further enacted, That, when the trustees or commissioners of any turnpike road shall put up the tolls to let to farm, the said trustees or commissioners may, if they think fit, appoint some person to bid for the same on their account, to the intent that such tolls may not be let for less than an adequate value (*z*).

Tolls of another trust
adjoining
may be
farmed.

LIV. And whereas in some situations a toll-gate or bar, belonging to trustees or commissioners of one road, is placed so near to the gate or bar of the trustees or commissioners of another road, as to be inconvenient to the respective trusts and to the public; be it therefore enacted, That it shall and may be lawful for the trustees or commissioners of any turnpike road, if they shall agree thereto, at any public meeting to be holden for that purpose, to take to farm the tolls payable at any toll-gate or bar of any other road adjoining or near to the road under their care and management; and the trustees or commissioners so farming the tolls may collect and receive the same, or may reduce the said tolls

(*y*) See Form of Notice, Schedule, No. 6.

(*z*) See a similar provision in 3 G. 4, c. 126, s. 55, ante, p. 45.

so farmed, or may discontinue the same, as they shall see fit (a).

CONVEY-
ANCES.

LV. And be it further enacted, That all sales and conveyances of any lands, tenements, or hereditaments, to be sold by the trustees or commissioners of any turnpike roads, shall be made at the expense of such trustees or commissioners, and shall be expressed in the following or some similar form of words, as the circumstances of the case may require; *videlicet*,

Trustees to
pay expense
of sales of
land, &c.

“WE —, of the trustees or commissioners acting in execution of an Act passed [*here insert the title of the Act appointing them*], in consideration of the sum of — to us paid by [*name of the purchaser*], do hereby grant and release to the said [*name of the purchaser*], all [*describing the premises to be conveyed*], and all our right, title, and interest to and in the same, and every part thereof, to hold to the said [*name of the purchaser*], his heirs, executors, administrators, and assigns, for ever, by virtue and according to the true intent and meaning of an Act passed in the fourth year of the reign of King George the Fourth, intituled An Act [*here set forth the title of this Act*]. In witness whereof we have hereunto set our hands and seals, this — day of —” (b).

Form of
conveyances.

LVI. Provided always, and be it further enacted, That it shall and may be lawful for the trustees or commissioners of any turnpike road, and they are hereby empowered, to purchase or rent, with the consent of the owner or proprietor thereof, any piece or pieces of ground within ten miles of the Royal Exchange, as a repository for materials, such piece or pieces of ground to be of such extent as they may think proper, so as the same shall not exceed in the whole half an acre (c).

Ground may
be purchased
for repository
of materials
within a
certain limit.

(a) See further as to letting tolls, 3 G. 4, c. 126, ss. 55—57.

(b) See further as to sales and conveyances by trustees, 3 G. 4, c. 126, ss. 86, 88. See also sect. 57 of this Act.

(c) Limited as to other roads to pieces of land not exceeding in any place six yards square on the sides of the road: 3 G. 4, c. 126, s. 102, p. 93.

TOLL-HOUSES.

Where toll-houses are not wanted, they shall be pulled down, and the materials sold.

LVII. And be it further enacted, That where any toll-house or toll-houses standing on or adjoining any turnpike road, and which shall have been erected by or vested in the trustees or commissioners of such road, shall become useless and be no longer required for the purposes of such road, it shall not be lawful for the trustees or commissioners of such road to sell or dispose of such toll-house or toll-houses, but in every such case the trustees or commissioners of the road on which such toll-house or toll-houses no longer required shall stand, shall cause such toll-house or toll-houses, with the out-houses attached or belonging thereto, to be pulled down, and the materials thereof to be sold or removed, and the site of such toll-house or toll-houses so pulled down, together with the gardens and appurtenances thereunto belonging, may then be sold by the said trustees or commissioners, in the same manner as and under the regulations in the said recited Act and this Act contained, with respect to any land or ground not wanted for the purposes of the road (*d*).

Lessees, or persons appointed by them, may occupy toll-houses.

LVIII. And be it further enacted, That during such time as the tolls arising on any turnpike road, or any part or parts thereof, shall be leased, demised, or let to any person or persons whomsoever, it shall and may be lawful to and for the lessee or lessees, or farmer or farmers thereof, or such other person or persons as he or they shall authorise or appoint, to occupy and enjoy the toll-house or toll-houses at which the said tolls so let are to be collected and to arise, with all the appurtenances and conveniences to the same toll-house or toll-houses belonging, for the purpose of collecting such tolls, during so long time only as such lessee or lessees, farmer

(*d*) The property of toll-houses is vested in the trustees, and they may let or mortgage them; and a power is given them to repossess themselves in a summary way of these houses, where the possession of the mortgagee has ceased to be legal, and where the lessee neglects to perform the terms of his agreement. See sect. 59, and 3 G. 4, c. 126, ss. 48, 60. As to the sale of unnecessary tenements, see sect. 63, post, p. 197.

or farmers, shall duly and regularly pay his, her, or their TOLL-HOUSES.
 rent or rents, and perform the covenants, agreements,
 and conditions of such lease, demise, or letting, but no
 further or otherwise.

LIX. And be it further enacted, That in case all or
 any of the tolls arising by virtue of any Act for repair-
 ing or amending any turnpike road shall have been or
 shall be demised or let to farm to any person or persons
 in any manner whatsoever, and the lessee or lessees,
 farmer or farmers thereof, shall neglect or refuse to per-
 form the terms and conditions on which the same shall
 have been or shall be so demised or let; or in case the
 rent or rents agreed to be paid by such lessee or lessees,
 farmer or farmers, shall be in arrear by the space of
 seven days next after any of the days on which the
 same ought to be paid, pursuant to the agreement for
 letting to farm thereof; or in case any such lease or
 agreement shall in any other manner become void;
 then and in any of those cases it shall and may be lawful
 for any justice of the peace for the county or place, by
 warrant (e) under his hand and seal, to order a con-
 stable or other peace officer, with such assistance as
 shall be necessary, to enter upon and take possession of
 any toll-house or toll-houses, toll-gate, bar or chain, or
 weighing machine, and the buildings and appurtenances
 thereto belonging, and to remove and put out such
 lessee or lessees, farmer or farmers of the tolls arising
 thereat respectively, or other person or persons who
 shall be found therein, together with his, her, or their
 goods, out of and from the possession of the said toll-
 house or toll-houses, and from the collection of tolls,
 and to put the said trustees or commissioners, or any
 one of them, or their new appointed officer, or other
 person acting by or under their authority, into the pos-
 session thereof; and thereupon it shall be lawful for the
 said trustees or commissioners (if they shall think fit)
 to vacate and determine the contract or agreement

Enabling
trustees to
take posses-
sion of the
toll-house, &c
when let to
farm, or held
by the col-
lectors for
the trustees,
in default of
performance
of conditions,
&c.

(e) See Form of Warrant to remove a person from a toll-house,
 Schedule to 3 G. 4, c. 126, p. 149.

**MORTGAGES,
&c.**

(if any) for demising or letting the said tolls to such lessee or lessees, farmer or farmers, and the same shall be from that time utterly void to all intents and purposes (save as to the covenants or agreements for payment up to that time of the rent or rents thereby reserved, or other covenants or agreements on the lessee's part which shall have been holden) as if such demise or agreement had never been made; and it shall be lawful for the said trustees or commissioners in every such case to demise or let to farm the said tolls again to any other person or persons, or cause them to be collected as if no former demise, contract, or agreement had been made relative thereto; any rule of law or right to the contrary notwithstanding.

Instead of
paying off
creditors
rateably,
trustees may
do so by lot.

LX. And be it further enacted, That in case the trustees or commissioners of any turnpike road shall at any time or times be desirous of paying off any portion of the principal monies due and owing upon the credit of such road, where all the interest due thereon shall have been duly paid or otherwise satisfied, it shall and may be lawful for them, at any meeting to be holden according to the directions of the said recited Act or this Act, or of the Act or Acts in execution of which they shall act (notice of such intended meeting and of the purposes thereof being first given, at least twenty-eight days preceding the same, by advertisement in some newspaper printed in or usually circulated in the neighbourhood of the said road), if they shall think fit, instead of paying the same rateably amongst all the creditors, to determine by lot to which of such creditors the whole or any portion thereof shall be so paid, and to pay the same to such creditor or creditors only, or to any of the creditors, with the consent of all the other creditors (*f*).

Trustees not
personally
liable for
mortgages.

LXI. Provided always, and be it enacted, That the trustees or commissioners for making or maintaining any turnpike road shall not be personally subject to or

(*f*) For other regulations respecting monies due on mortgage, see 3 G. 4, c. 126, ss. 81, 82; 9 G. 4, c. 77, ss. 10—13, &c.

liable to be charged with the payment of any sum or sums of money, by reason of their having signed or executed any mortgage, or assignment by way of mortgage, or other security to be made by virtue or in pursuance of any Act for making or maintaining any turnpike road: Provided also, that in case any action, suit, or prosecution shall be brought or commenced against any such trustee or commissioner, for any thing done by virtue or in pursuance of the said recited Act of the third year of his present Majesty, or this Act, or any such Act for making or maintaining any turnpike road, all the costs, charges, and expenses of defending such action, suit, or prosecution, or which such trustee or commissioner shall incur in consequence thereof, shall be defrayed out of the tolls arising on the turnpike road for which such trustee or commissioner shall act (*g*).

MORTGAGES,
&c.
—

Costs of actions to be paid out of the tolls.

LXII. And be it further enacted, That all and every book and books containing the accounts and proceedings of the trustees or commissioners for executing any Act for making or maintaining any turnpike road, or containing any orders or agreements made or entered into by them, such book or books being kept and signed in manner directed by such Act, or by the said recited Act and this Act directed, shall and may be given in evidence in all cases of appeal, and in all prosecutions, suits, and actions whatsoever.

Books used under former Acts to be evidence.

[*Repealed by* 9 G. 4, c. 77, s. 1.]

LXIII. And be it further enacted, That in case the trustees or commissioners for making or maintaining any turnpike road shall become possessed of any tenements or hereditaments which are useless or unnecessary for the purposes of such road, it shall and may be lawful for the said trustees or commissioners to sell and dispose of the same, in such and the same manner as by the said recited Act (*h*) they are authorised and empowered to do, in the cases of any land or ground not wanted for the purposes of such road (*i*).

Sale of unnecessary tenements.

(*g*) See *Wormwell v. Hailstone*, 6 Bing. 668; and see further as to the liability of trustees, 7 & 8 G. 4, c. 24, s. 2, and the sections and cases there cited.

(*h*) 3 G. 4, c. 126, ss. 86, 89.

(*i*) This does not extend to toll-houses. See sect. 57, ante, p. 194.

ACQUIRING
LANDS, &c.

So much of
3 G. 4, c. 126,
s. 96, [ante,
p. 87], as re-
strains trust-
tees from
taking in-
closed lands,
gardens, &c.,
without con-
sent, repeal-
ed.

Trustees not
to pull down
dwelling-
houses, or
take in gar-
dens, &c.,
without con-
sent.

LXIV. And be it further enacted, That so much of the said recited Act as enacts, that it shall not be lawful for the trustees or commissioners of any turnpike road, in altering or diverting the course of any part of the turnpike road under their care and management, to deviate over any inclosed lands or grounds more than one hundred yards, without the consent in writing of the owner or proprietor of such lands or grounds, or to take in or make use of any garden, yard, paddock, park, planted walk or avenue to a house, or planted and set apart as a nursery for trees, or any part thereof respectively, without the like consent of the owner or proprietor thereof first had and obtained, shall be and the same is hereby repealed.

LXV. And be it further enacted, That it shall not be lawful for the trustees or commissioners of any turnpike road, in altering or diverting the course of any part of the turnpike road under their care and management, to take or pull down any dwelling-house or other building, or in altering or diverting the course of any part of the turnpike road under their care and management, to deviate over any inclosed lands or grounds more than one hundred yards from the line or course of such turnpike road, without the consent in writing of the owner or proprietor, or of the person or persons hereby authorised to act for and on behalf of the owner or proprietor of such dwelling-house or other building, or of such lands or grounds, or to take in or make use of any garden(*k*), yard, or paddock, or any park, planted walk or avenue to a house, or any inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees, or any part thereof respectively, without the like consent of the owner or proprietor thereof(*l*), or of the person or persons hereby authorised as aforesaid, first had and obtained; and it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees in trust, committees, executors, administrators, and all other persons whomsoever, not only for or on behalf of themselves, their heirs and succes-

(*k*) See note (*k*), ante, p. 88.

(*l*) See *Rex v. Denbighshire Justices*, 2 D. & R. 55.

sors, but also for and on behalf of the person or persons entitled in reversion, remainder, or expectancy after them, and for and on behalf of their cestui que trusts, whether femmes covert, infants, or issue unborn, lunatics, idiots, or other person or persons whomsoever, and to and for all femmes covert who are or shall be seised of or interested in their own right, and to and for all and every person or persons whomsoever, who are or shall be possessed of or interested in any such lands, tenements, hereditaments, or premises, or who shall sustain any damage, to give their consent in writing to the said trustees or commissioners, for the taking or pulling down of such dwelling-house or other building, or the making such deviation of more than one hundred yards as aforesaid, or the making use of such garden, yard, paddock, park, planted walk, avenue, or other such premises as aforesaid, and to contract with the said trustees or commissioners for the sale thereof, or for the satisfaction to be made for the same, or for such damages as aforesaid, and by conveyance, lease and release, or bargain and sale, to sell and convey unto the said trustees or commissioners all or any such lands, tenements, hereditaments, or premises, or any part thereof, for the purposes aforesaid; and all contracts, sales, and conveyances which shall be so made, shall be good, valid, and effectual to all intents and purposes, without fine or recovery, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests whatsoever, any law, statute, usage, custom, or other matter to the contrary notwithstanding; and all such bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, feoffees, committees, executors, administrators, and all other persons, shall be and are hereby indemnified for what they or any of them shall do by virtue or in pursuance of this Act: Provided always, that nothing herein contained shall extend or be deemed, taken, or construed to extend to revoke, limit, abridge, alter, or vary any powers or authorities contained in any Act or Acts of Parliament existing and in force at the passing of this

ACQUIRING
LANDS, &c.

FENCING
ROADS.

Act, for making, altering, or diverting any turnpike road or roads, or the course thereof, to be made, altered, or diverted and maintained under the authority of such Acts, but the same powers and authorities shall and may be exercised and carried into effect by the trustees or commissioners appointed by such Acts, fully and effectually; anything herein contained to the contrary notwithstanding(*m*).

Trustees to
fence roads.

LXVI. And be it further enacted, That, in all cases where the trustees or commissioners of any turnpike road shall turn or alter any part or parts of such turnpike road, or make any new road over and through any private grounds, or across any public or private footway, or shall take away any fence for widening or improving any such road, the said trustees or commissioners shall make or cause to be made and planted proper quickset hedges, or shall make or build proper fences or walls on both sides of such new-made road, or on the side upon which any such fence may be so removed as aforesaid, with sufficient ditches to the same, and sufficient posts and rails, or other fence on both sides of such quickset hedges, to protect the growth thereof, so as effectually to guard and fence off the lands adjoining any such road from trespass or injury by horses, asses, cattle, sheep, or swine; and also proper gates, stiles, posts, bridges, and arches, where necessary, out of any such road into the lands adjoining, and shall keep such fences so to be made in good order and repair for and during the term of five years from the time that such fences shall have been made or set up(*n*); unless the owners or proprietors for the

(*m*) See further as to acquiring lands, conveyances to trustees, &c., 3 G. 4, c. 126, ss. 84, 85; 9 G. 4, c. 77, ss. 5, 9, &c.

(*n*) If trustees under an Act turn a road through an inclosure, and make the fences at their own expense, and repair them for several years, they cannot be compelled to continue such repairs, unless there be a special provision in the Act to that effect: *Rex v. Commissioners of Llandillo District*, 2 T. R. 232. In that case it was considered, that what is meant by a *road* is the sur-

time being of any such land or ground shall agree with the trustees or commissioners to keep such fences in repair from an earlier period for such time as aforesaid.

DRAINING
ROADS.

LXVII. And be it further enacted, That it shall be lawful for the surveyor and surveyors, and such other person and persons as shall be appointed by the trustees or commissioners of any turnpike road, from time to time to cut, make, or maintain drains or watercourses upon and through any lands lying contiguous to any such road, and also to make ditches in such places and in such manner as such surveyor and surveyors, by order of such trustees or commissioners, shall judge necessary; and make sufficient fences and barriers, and other erections, on any part or parts of the said road, in order to prevent any rivulet or current of water from flooding the same, as such surveyor or surveyors shall judge necessary; making such satisfaction to the owners or occupiers of such lands so to be used, cut through, or built upon, for the damages which they or any of them may sustain thereby, as such trustees or commissioners shall judge reasonable; and in case of any difference between such owners or occupiers and such trustees or commissioners touching such damages, the same shall be finally settled by any two or more justices of the peace for the county, city, or place in which such road shall lie or be situate (o).

Surveyors
may make
drains, &c.

face over which the king's subjects have a right to pass, and that the owners of the land are bound to *repair* their fences on each side, unless it is otherwise provided by the Act.

Where the trustees had neglected to make proper fences as required by this section, want of the necessary funds for that purpose was held to be no answer to a mandamus commanding them to make the fence: *Reg. v. Luton Road Trustees*, 1 Q. B. 860. See also the meaning of the word *road* and centre thereof, 3 G. 4, c. 126, s. 124, ante, p. 117; *Leader v. Moxon*, 3 Wils. 461; 2 Bla. 924.

(o) See further as to drains, &c., 3 G. 4, c. 126, ss. 113—115;

REPAIRS.

Regulating
the repair of
roads when
widened, &c.,
in cases of
liability to
repair old
roads.

LXVIII. And whereas doubts have arisen and may arise, whether any body politic or corporate, or any particular person or persons, liable to repair, by tenure or otherwise, any old turnpike road or part of such road widened, altered, diverted, or turned, ought to repair or contribute to the repair of the whole or any part or proportion of the new road set out in lieu of the old turnpike road; For obviating such doubts, and preventing disputes about the same, be it further enacted, That all and every body politic or corporate, and person and persons, who was, were, or shall be liable as aforesaid to the repair of any old turnpike road, which has been, since the passing of the said recited Act, or shall be, widened, altered, diverted, or turned, shall respectively be and continue in the same manner liable to the repair of such new road set out in lieu of the old road, or so much thereof as shall be equal to the burthen and expense of repairing such old road, from which he, she, or they shall be exonerated by the widening, altering, diverting, or turning thereof; and if the several parties interested therein cannot agree, the same shall be viewed by two justices of the peace of the county where such road shall be, and shall be settled, adjusted, and determined by them, in such manner as they shall think just and reasonable; and from and after such determination of the justices, the body politic or corporate, and person or persons liable to repair such new road as aforesaid, shall bear all charges of presentments, indictments, and prosecutions for not repairing the same; and if it shall be found more convenient to fix a gross sum, or an annual sum, to be paid by any such body politic or corporate, or person or persons, instead of fixing the part or proportion of such new road to be repaired by him, her, or them, the said justices may, with the consent of such person or persons, and also of the trustees or commissioners of the road, obtained at a

and as to the trustees' liability on account of cutting drains, see note on 7 & 8 G. 4, c. 24, s. 2; *Sutton v. Clarke*, 6 Taunt. 29; 1 Marsh. 429; Appendix, &c.

meeting of such trustees or commissioners, order and direct the same accordingly; and the order and direction of the said justices shall be final and conclusive, and shall continue binding on all bodies politic or corporate, and persons whomsoever (*p*). DAMAGES.
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LXIX. And be it further enacted, That, where by this Act or the said recited Act, or any Act for making or maintaining any turnpike road, any damages or charges are directed or authorised to be paid or recovered, in addition to any penalty or penalties for any offence or offences, the amount of such damages or charges, in case of dispute respecting the same, shall be settled, ascertained, and determined by the justice or justices of the peace by or before whom any offender shall be convicted of any such offence or offences; who is hereby authorised and required, on non-payment thereof, to levy such damages or charges by distress and sale of the offender's goods and chattels, in manner directed by the said recited Act for the levying of any penalties or forfeitures. Damages and charges in cases of dispute, to be settled by justices.

LXX. And whereas it was by the said Act enacted, that when any sum of money should be ordered to be paid by any justice of the peace, in pursuance of the directions of any Act relating to turnpike roads, by way of compensation or satisfaction for any materials, costs, damages, spoil, or injury done or committed by any such trustees or commissioners, or any person or persons acting under their authority, and such sum should not be paid by the said trustees or commissioners to the parties entitled to receive the same within fourteen days after demand in writing should have been made, then the amount of such compensation or satisfaction should be levied and recovered by distress and sale of the goods and chattels vested in the said trustees or commissioners by virtue of any such Act, under a warrant to be issued for that purpose by such justice or justices of the peace: And whereas the said provision has been found inconvenient; be it therefore enacted, That the said provision shall be and the same is hereby repealed. Repeal of provision in recited Act, 3 G. 4, c. 126, s. 135, [ante, p. 125], for non-payment of damages.

LXXI. And be it further enacted, That, when and as often as any sum or sums of money shall be directed In case of non-payment of compensa-

(*p*) See *Rex v. Winter*, 8 B. & C. 785; see sect. 80, post, p. 213; 5 & 6 W. 4, c. 50, s. 94, &c. As to the doubt which the above clause is intended to obviate, see note on 7 & 8 G. 4, c. 24, s. 17.

DAMAGES.
tion for
damages, &c.,
by the trus-
tees, the
same to be
levied by
distress of
the goods
vested in
them or their
treasurer.

or ordered to be paid by any justice or justices of the peace, in pursuance of the directions of the said recited Act or this Act, or any Act relating to turnpike roads, as or by way of compensation or satisfaction for any materials or costs, or for any damage, spoil, or injury, of any nature or kind whatsoever, done or committed by such trustees or commissioners, or any person or persons acting by or under their authority, and such sum or sums of money shall not be paid by the said trustees or commissioners to the party or parties entitled to receive the same, within ten days after demand in writing shall have been made from the clerk to the said trustees or commissioners, or their treasurer, in pursuance of the direction or order made by such justice or justices, and in which demand the order of such justice or justices shall be stated, then and in such case the amount of such compensation or satisfaction shall and may be levied and recovered by distress and sale of the goods and chattels vested in such trustees or commissioners by virtue of any Act for making or repairing turnpike roads, or of the goods and chattels of their treasurer for the time being (*q*), under a warrant to be issued for that purpose by such justice or justices, which warrant any such justice or justices is and are hereby authorised and required to grant under his hand and seal or their hands and seals, on application made to him or them for that purpose by the party or parties entitled to receive such sum or sums of money as or by way of compensation or satisfaction for any such materials, costs, damages, spoil, or injury as aforesaid; and in case any overplus shall remain after payment of such sum or sums of money, and the costs and expenses of hearing and determining the matter in dispute, and also the costs and expenses of such distress and sale, then and in such case such overplus shall be returned on demand to the said trustees or commissioners, or to their treasurer for the time being, as the case may be: Provided always, that it shall

(*q*) See *Wormwell v. Hailstone*, Appendix.

and may be lawful for such treasurer to retain, out of any monies which he shall have received or shall receive in pursuance of any such Act, or the said recited Act or this Act, all such damages, costs, charges, and expenses as he shall have sustained or be put unto by virtue of any such warrant as aforesaid.

LXXII. And be it further enacted, That if any person or persons whomsoever shall wilfully pull down, break, injure, or damage any table of tolls put up or fixed at any toll-gate or bar on any part of any turnpike road, or wilfully or designedly deface or obliterate any of the inscriptions, letters, figures, or marks thereon; or if any person or persons shall wilfully pull up, throw down, break, injure, or damage any posts, rails, or fences placed or to be placed or put up by order of any trustees or commissioners of any turnpike road, or their surveyor or surveyors, either by the side or sides of such road, or at or near to any pit or quarry which shall be used, opened, or made for the getting of stones, gravel, or other materials for the purposes thereof, in order to prevent accidents; or if any person or persons shall wilfully cause any damage or injury to be done to any bridge, arch, wall, or other building or erection to be set up or erected by virtue of any Act on any part of any turnpike road, or by the side or sides thereof; or if any person or persons shall cast or throw any earth or rubbish, or other matter or thing, into any drain, ditch, culvert, tunnel, or other watercourse made by virtue of any Act, so as to obstruct the water from running or draining off any turnpike road; or if any person or persons shall, without being thereto authorised by the surveyor or surveyors for the time being acting under any Act, shovel up, scrape, gather, or carry away any stones, gravel, sand, or other materials, slutch, dirt, mire, drift, or soil from off any footpath or causeway, or any other part of such road; or if any person shall in any manner wilfully prevent any other person or persons from passing him or her, or any carriage under his, her, or their care, upon any such road; or if any such person shall dig, make, or use any pit or pits for sawing of timber or

ANNOTANCES.

For preventing annoyances.

Wilfully injuring toll-tables.

Gravel pits, fences, &c.;

Buildings, &c.;

Casting rubbish into drains;

Carrying away scrapings;

Obstructing passengers;

Making saw-pits.

**DRIVERS OF
CARRIAGES.****Penalty.**

wood within thirty feet of the centre of any such turnpike road, unless where inclosed by a fence from any such road; every person offending in any of the cases aforesaid shall forfeit and pay a sum not exceeding forty shillings for every such offence; and one moiety of such penalties shall be paid to the informer, and the other moiety thereof shall be paid to the treasurer of the trustees or commissioners of such turnpike road, and applied towards the repair of such road (*r*).

If driver offend against the provisions of any Act, and abscond, the master to pay the penalty.

LXXIII. And be it further enacted, That in case the driver of any waggon, cart, or of any coach or other carriage, shall offend against any of the provisions of any Act for making or maintaining any turnpike road, or the said recited Act or this Act, whereby any penalty shall be incurred, and shall refuse to give his name, or shall abscond or absent himself so as not to be found, then it shall and may be lawful for any justice of the peace before whom complaint shall be made, and he is hereby required, to issue a summons, requiring the owner of such waggon, cart, or other carriage to appear before him to answer the matter of such complaint; and if such owner shall refuse or neglect to appear, or appearing shall not then, or within ten days thereafter, produce the driver so offending, or disclose his name and place of abode, then the said justice, or any other justice of the peace, on an examination of the circumstances, and ascertaining, by the examination of witnesses on oath, that such offence has been committed by any such driver of any waggon, cart, or other carriage, shall order and adjudge that the penalty incurred by such driver shall be paid by the owner of such waggon, cart, or other carriage; which penalty shall be recovered and applied in manner directed by the said recited Act (*s*).

(*r*) See Form of Conviction on this section, Appendix, No. 79; and see further as to injuries to road property, 3 G. 4, c. 126, ss. 119—121; 7 & 8 G. 4, c. 30, s. 14, &c.

(*s*) See further as to offences by drivers of carriages, 3 G. 4, c. 126, ss. 130, 131, 132, &c.

LXXIV. And whereas it was by the said recited Act enacted, that if any horse, ass, sheep, swine, or other beast or cattle, should at any time be found wandering, straying, or lying about any turnpike road, or across any part thereof, or by the sides thereof (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground), it should be lawful for any surveyor of the road where the same should be found, or any other person or persons to seize and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound of the parish or place where the same should be, or in such other place as the trustees or commissioners of the road where the same should be found shall have provided for that purpose, and the said horse, ass, sheep, swine, or other beast or cattle there to detain, until the owner thereof should for every horse, ass, sheep, swine, or other beast or cattle so impounded, pay the sum of five shillings to the person impounding the same, together with the reasonable charges of impounding and keeping the same; and in case the said penalty and charges should not be paid within four days after such impounding, it should be lawful for the surveyor of the road on which the same should have been seized, to sell such horse, ass, sheep, swine, or other beast or cattle; and the money arising from such sale, after deducting the said penalty and charges of impounding, keeping, and selling every such horse, ass, sheep, or swine, or other beast or cattle, should be paid to the person whose property the same so sold should appear to have been: And whereas the said provision has been found inconvenient; be it therefore enacted, That the said provision shall be and the same is hereby repealed.

IMPOUNDING
CATTLE

Provision in
recited Act,
3 G. 4, c. 126,
s. 122 [ante,
p. 116], for
impounding
cattle, &c.,
repealed.

LXXV. And be it further enacted, That if any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found tethered, or wandering, straying, or lying about any turnpike road, or on any part thereof (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground), it shall and may be lawful for any surveyor of the road where the same shall be found, or any other person or persons whomsoever, to seize (u) and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound (if any) of the parish, township, tithing, or place where the same shall be found, or in such other place as the trustees or

Cattle found
straying on
the roads to
be impound-
ed (t).

(t) See 5 & 6 W. 4, c. 50, s. 74.

(u) As to the extent of this power, see *Kemp v. Burt*, 4 B. & Ad. 424.

**IMPOUNDING
CATTLE.**
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commissioners of the road where the same shall be found shall have provided or shall provide for that purpose, and the said horse, ass, sheep, swine, or other beast or cattle there to detain, until the owner or owners thereof shall for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay the sum of two shillings, together with the reasonable charges and expenses of impounding and keeping the same, to the treasurer, clerk, or surveyor of the road, on which the beast so impounded shall have been found; the said sum of two shillings for each beast to be applied to the use of and in aid of the tolls of such road; and in case the said penalty, charges, and expenses shall not be paid within five days after such impounding (notice being thereof first given to the owner, if known, at the time, or if not known, by affixing written notices at the two next toll-gates on the road nearest to the place where the same shall be impounded), it shall and may be lawful for any one or more justice or justices of the peace of the county or place where the offence shall have been committed, to order every such horse, ass, sheep, swine, or other beast or cattle to be sold, except where it shall be made to appear to such justice or justices, that the horse, ass, sheep, swine, or other beast impounded, escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner or occupier of such inclosure, or employed by such owner or occupier, in which case such justice or justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty and charges and expenses of impounding, keeping, and selling every such horse, ass, sheep, swine, or other beast or cattle, shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale within twenty-one days after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expenses, in the same manner as the said penalty of two shillings is

Limiting the hereinbefore directed to be applied: Provided always,

that no owner of any horses, asses, sheep, swine, or other beasts or cattle impounded as aforesaid, shall in any case pay more than the sum of five pounds over and above the charges and expenses of impounding and keeping the same, for any number of horses, asses, sheep, swine, or other beasts or cattle impounded at one time: and provided always, that nothing in this clause shall be deemed, taken, or construed to extend to take away any right of pasturage which may exist on the sides of any turnpike roads (x).

IMPOUNDING
CATTLE.

extent of
penalty.

Right of
pasturage
not taken
away.

(x) It seems to be clearly established that any right of way, whether it be public or private, is nothing more than an easement upon the land over which it extends, and that the freehold and soil, and all other rights which are not inconsistent with the public use of it as a way, remain either in the owners of the adjoining lands, or in the lord of the leet, or in such other person as can claim the same by way of prescription: *Lade v. Shepherd*, 2 Str. 1004; *Headlam v. Hedley*, Holt, 463; and such owner may maintain an ejectment for it: *Goodtitle v. Alker*, 1 Burr. 133; *Doe d. Jackson v. Wilkinson*, 3 B. & C. 413. It has even been held that the trustees of a turnpike road have not the soil of the road vested in them, so as to be enabled to give a consent to the diverting a public footpath into it without a special clause in the statute, vesting the right in them: *Davison v. Gill*, 1 East, 69; *Rex v. Mersey Navigation*, 9 B. & C. 95. And hence it has been said, that cattle should be driven directly along the highway, and should not be suffered to linger; and that, if they do anything but pass and repass, it is a trespass (10 E. 4, 7; Bro. Abr. Tres. pl. 312), for, the property of the soil being vested in the owner, subject to an easement for the benefit of the public, a lawful user must appear:—By *Heath, J.*, in *Dovaston v. Payne*, 2 H. Bl. 531. As to the small slips or pieces of land at the sides of the road, and waste land lying between the road and the adjoining land, and which are supposed to have been left by the owners to be used by the public when the road was out of repair (per *Abbott, L. C. J.*, *Doe d. Pring v. Pearsey*, 7 B. & C. 304, 9 D. & R. 908), the presumption is, that they also belong to the landowners on each side: *Stevens v. Whistler*, 11 East, 51; *Cooke v. Green*, 11 Price, 736. But acts of ownership on the part of the lord may be admitted to repel such presumption: *Anon. Lofft*,

Right of soil
and pastur-
age.

CONTRACTS,
&c.

Carriers'
dogs to be
fastened to
the carriage.

LXXVI. And be it further enacted, That if any person or persons having the care of any waggon, wain, cart, or other such carriage conveying goods for hire or reward, or for sale on any turnpike road, shall not chain or fasten any dog that may be attending him or them on such road to such waggon, wain, cart, or carriage, every person so offending shall forfeit and pay any sum not exceeding twenty shillings.

Form of sur-
veyor's list
given in
Schedule,
No. 2.

LXXVII. And whereas the form of the list to be delivered to the surveyors of turnpike roads by the surveyors of the highways is omitted in the schedule to the said recited Act; be it further enacted, that the form given in the schedule to this Act annexed(y), marked (No. 2), shall and may be used for that purpose.

Contracts or
agreements
may be made
for amending
roads, &c.

LXXVIII. And be it further enacted, That it shall and may be lawful for the trustees or commissioners of any turnpike road, or for their clerk, surveyor, or any other officer by their order, to contract and agree, by

358; *Doe d. Barrett v. Kemp*, 7 Bing. 332, 5 M. & P. 173, &c. And if the narrow slips be contiguous to or communicate with open commons, or large portions of land, the presumption in favour of the landowner is either done away with, or considerably narrowed: *Grose v. West*, 7 Taunt. 39. And see *Steel v. Prickett*, 2 Stark. 463. By the General Inclosure Act, 41 G. 3, c. 109, s. 11, it is expressly enacted, "That, after such public and private roads and ways shall have been set out and made, the *grass* and *herbage* arising thereon shall for ever belong to and be the sole right of the proprietor of the lands and grounds which shall next adjoin the said roads and ways on either side thereof." But see *Rex v. Edmonton*, 1 Man. & R. 24. It has been contended, that the owner of the soil has an exclusive right of pasturage on and by the side of the highways; but it is clear that he can only have such a right in this respect as can be exercised without injury to the public. The above section, while it prohibits cattle, &c., from being on the highway without a keeper, has been so framed as to leave the question respecting the right of pasturage to the decision of the common law, or the Acts under which the respective roads were created.

(y) See the Form of such List in the Schedule, and see note (d), post, p. 214.

the year or otherwise, with any person or persons for the making, amending, altering, or maintaining the said road, or any bridges, toll-houses, or buildings thereon, or for any other thing which such trustees or commissioners are by any Act for making or maintaining turnpike roads, or the said recited Act (z), or this Act, or any other Act, authorised or empowered to make, build, do, execute, or perform; and all contracts or agreements in writing entered into by the said trustees or commissioners, or pursuant to any order of the said trustees or commissioners, by their clerk, surveyor, or other officer, with any workmen or other person or persons relating to any matter or thing to be done by virtue of any such Act, or the said recited Act, or this Act, shall be binding on the said trustees or commissioners and their successors, and upon all other parties who shall sign the same, and the heirs, executors, and administrators of such other parties (a); and that actions and suits shall and may be maintained thereon by the said trustees or commissioners, and damages and costs recovered against the party or parties, or person or per-

CONTRACTS.

(z) 3 G. 4, c. 126. By that Act, sect. 84, the trustees are also authorised to contract for lands for making the road; and by sect. 100, to contract for land to get materials; and by sects. 106, 107, 108, to contract or agree with parishes, counties, and persons liable by tenure for the repair of roads, bridges, &c.; and by sects. 55, 57, to contract for letting the tolls. In entering into these contracts the provisions of the statute must be strictly followed. See *Curling v. Johnson*, 3 M. & Scott, 498, 10 Bing. 89, where the clerk to commissioners under a paving Act was held to have no right to sue for expenses under a contract not duly entered into. The Act gave the commissioners a power to sue in the name of their clerk, but the Court held that it must be upon such a contract as they were authorised to enter into. As to when the Statute of Limitations operates as a bar to contracts made by trustees, see *Emery v. Day*, 1 C. M. & R. 245; and see the cases cited in the Appendix.

(a) See further as to actions and prosecutions, 3 G. 4, c. 126, ss. 60, 74; and 7 G. 4, c. 64, s. 17.

**STATUTE
LABOUR.**

sons failing in the performance of such contracts or agreements respectively; and such sum or sums of money as shall be requisite for the due performance of such contract shall be the measure of the damages to be recovered in any action or suit against such party or parties, or person or persons so as aforesaid making default in fulfilling his, her, or their contract or agreement; any law or usage to the contrary in anywise notwithstanding.

Provision in
recited Act, 3
G. 4, c. 126, s.
104, [ante, pp.
94, &c.,] re-
specting sta-
tute labour,
repealed.

LXXIX. And whereas it was by the said recited Act enacted, that all persons who by law should be liable to do statute work, or should be chargeable towards the repairing and amending any turnpike road, should remain liable thereto, and it should be lawful for any two or more justices of the peace for the place in which any such turnpike road should be situate, upon application made to them by the trustees or commissioners of any turnpike road, yearly to determine what part of the statute work should every year be done upon such road by the inhabitants of the respective parishes, hamlets, and places through which the said road should pass, and also what proportion of the money received by the surveyors of the highways, as a composition for such statute work, should be paid to the said trustees or commissioners, or their treasurer; and that such surveyor should, on an order in writing made by the said justices, bring and deliver within ten days afterwards, to the said turnpike surveyor, true and perfect lists in writing of the names of the several persons subject and liable to do statute work for that year, or to the payment of any money as a composition for such statute work; and the said turnpike surveyor should, within five days afterwards, give a notice to the surveyors of the highways of the time when such lists would be laid before the said justices, in order to apportion the said statute duty, and at the time appointed the said lists should be laid before the said justices by the said turnpike surveyor, in the presence of the said surveyor of the highways; and out of such lists the said justices should order such and so many of the persons who should appear to be subject and liable to do statute work in every year upon such road as the said justices should think reasonable, and the same should be done on such days as the said trustees or commissioners, or their surveyor, should appoint; and the said justices should order the persons who by such lists should be subject and liable to the payment of any money as a composition for the statute work, to pay such proportion thereof as the said justices should think proper, to the surveyors of such parishes, to be by them paid over to the said trustees or commissioners, or their treasurer, at such times as the said justices should direct; and every person who should neglect or refuse to do such statute work should, for every day of his default, be subject and liable to such

finer and forfeitures as such person might be subject or liable to by any law or statute in force for repair of the public highways; and if any person who should come to work as a labourer, or should be sent with any team to work on any part of such road, should be found idle or negligent, the surveyor to the said trustees or commissioners is thereby empowered to dismiss the person who should be so found idle or negligent; and every such person should be subject and liable to the respective forfeitures and payments, as if he had neglected or refused to come, or such team had not been sent to work; all which forfeitures should be paid to the treasurer of such trustees or commissioners, and applied towards amending such road; and in case the surveyor or surveyors of the highways should refuse or neglect to give in any such lists as aforesaid, or knowingly or wilfully give in false and imperfect lists, or refuse or neglect to collect or pay over such composition money, or any part thereof, every such surveyor so offending should, for every such offence, forfeit and pay any sum not exceeding ten pounds: And whereas it is expedient that the said provision should be repealed; be it therefore enacted, That the said provision shall be and the same is hereby repealed.

LXXX. And be it further enacted, That all persons who by law are or shall be liable to do statute work, or are or shall be chargeable towards the repairing (b) and amending any turnpike road, shall be and remain liable thereto, in like manner in every respect as they now are or have heretofore been; and it shall be lawful for any two or more justices of the peace in and for the county, city; or place in which any such turnpike road shall lie or be situate, and they are hereby required and empowered, upon application made to them by any three or more of the trustees or commissioners of such turnpike road, or by their clerk or surveyor, yearly to adjudge and determine what part or proportion of the statute work (c) shall every year be

Regulations
as to statute
labour.

(b) The first part of this clause, which is still in force, is re-enacted as to repairs by 7 & 8 G. 4, c. 24, s. 17, with additions. See the notes on that section, as to the liability to repair highways and turnpike roads. Statute duty.

(c) By the simple provisions of the common law, it appears that the inhabitants of the parish were to use their endeavours for the repair of the highways; that is, personal labour, and the contribution of materials and implements of labour were the only charge upon the occupiers of land in the parish. To render such a burthen equal upon all, and effective as to the object in view,

**STATUTE
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done upon such road by the inhabitants of the respective parishes, hamlets, and places in or through which the said road doth or shall lie, lead, or pass, and also what proportion of the money received by the surveyor or surveyors of the highways of every such parish, hamlet, or place, in lieu of or as a composition for such statute work as aforesaid, shall be by him, her, or them paid to the said trustees or commissioners, or their treasurer or treasurers; and in order thereunto the surveyor or surveyors of the highways for every such parish, hamlet, or place, shall, on an order (*d*) in writing made by the said justices, on an application to them by the trustees or commissioners of the turnpike road, or any three or more of them, or by their clerk or surveyor, and respectively delivered to such surveyor or surveyors of the highways, or left at his or their last or usual place of abode, bring and deliver within ten days afterwards to the said turnpike

would be a work of some nicety, and therefore required the intervention of the legislature. Hence arose the regulations respecting statute labour, and composition partly or wholly in lieu of statute labour, the enactments respecting which formed so large a portion of the laws respecting parish highways. Then an assessment was imposed upon the inhabitants to meet incidental expenses, when the statute labour was insufficient.—(See *Well-beloved on Highways*, p. 125, &c.) An opinion has long been entertained, that, according to the improved method of road making, statute labour might be advantageously dispensed with, and that the roads might be more effectually as well as more economically kept in repair entirely at the expense of the parish.—(See *Scott on Highways*, 1778); and an accumulation of evidence in favour of the superior advantages of a money rate for all the purposes of the highways, has at length led to the repeal, by the General Highway Act, 5 & 6 W. 4, c. 50, of the long and complex enactments relating to statute labour and composition; a provision being, however, inserted to secure to the farmers the teamwork necessary for the repairs in their respective parishes, should they agree to it at a general meeting. See ante, note (*s*), p. 96, and note (*z*), p. 101.

(*d*) The Forms of Summons, Lists, Notices, and Orders, will be found in the Schedules to 3 G. 4, c. 126, and this Act; but it does not appear how such forms can be of any utility now that the Highway Act, 5 & 6 W. 4, c. 50, has come into operation, as that Act (sect. 1) repeals all the existing laws relating to statute duty on parish highways. There is, however, no absolute repeal of the above enactments.

surveyor, or to his place of abode, true and perfect lists in writing of the names of the several persons who within such parish, hamlet, or place, are by law subject and liable to do statute work for that year, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts, or otherwise, and also the amount of the respective sums to be paid; which lists of names shall be made in such manner and under such regulations and restrictions as are or may be directed by any law or statute in force or effect for the repairs of the public highways, and may be made in the form specified in the schedule to this Act (e); and the said turnpike surveyor, having received such lists, shall, within fourteen days afterwards, give a notice (e) to the surveyor or surveyors of the highways of the time when such lists will be laid before the said justices, in order to apportion the said statute duty; and at the time appointed in and by such notice, the said lists shall be laid before the said justices by the said turnpike surveyor, in the presence of the said surveyor of the highways (if he shall attend), and out of such lists the said justices shall and may allot, appoint, and order (e) such and so many of the persons who shall appear to be subject and liable to do statute work in every year upon such road, as the said justices shall think reasonable, and the same shall be done on such days, and at such time (not being hay-time or harvest), and on such parts of the said road as the said trustees or commissioners, or their surveyor or surveyors, shall from time to time order, direct, or appoint; and the said justices shall and may order and direct the surveyor or surveyors of such parishes, hamlets, and places respectively, to pay over to the said trustees or commissioners, or their treasurer, or other person duly authorised to receive the same, such proportion of the composition money for statute work as aforesaid as they the said justices shall think proper, and at such time or times as the said justices shall direct; and each and every person who shall neglect or refuse to do such statute work as aforesaid, after notice in writing given to or left for him, her, or them at his, her, or their last or usual place or places of abode for that purpose, by any surveyor to the said trustees or commissioners, shall, for every day of his, her, or their default, or the default of any labourer or labourers, team or teams, draught or draughts, horse or horses, beast or beasts, to be provided by him, her, or them, be subject and liable to such fines, penalties, and forfeitures as such person or persons may be subject or liable by any law or statute now in force or effect for repair of the public highways; and if any person who shall come to work as a labourer, or shall be sent with any team or draught to work on any part of such road, shall be found idle or negligent by any surveyor to the said trustees or commissioners, such surveyor is

(e) See preceding note (d), p. 214.

**STATUTE
LABOUR.**

hereby empowered to remove and dismiss the person who shall be found idle or negligent as aforesaid; and in that case every such person shall be subject and liable to the respective forfeitures and payments as aforesaid, as if he had neglected or refused to come, or such team or draught had not been sent to work on any part of such road; all which forfeitures shall be paid to the treasurer to the said trustees or commissioners, and applied towards amending the said road; and in case the surveyor or surveyors of the highways for any of the said parishes, hamlets, or places, shall refuse or wilfully neglect to give in any such lists as aforesaid, or shall knowingly or wilfully give in false and imperfect lists, or shall refuse or neglect to collect or pay over such composition money, or any part thereof, in manner aforesaid, every such surveyor so offending shall, for every such offence, forfeit and pay any sum not exceeding ten pounds; and such composition money shall and may be recovered from such surveyor or surveyors of the highways, by distress and sale of his or their goods and chattels, by warrant under the hands and seals of any two justices of the peace for the county, city, or place where any such road shall lie or be situate.

In case no highway surveyor appointed, lists of persons liable to do statute work to be made out in manner herein directed.

LXXXI. And be it further enacted, That where any turnpike road shall pass through any parish, township, or place liable to the repair of the roads within the same, but for which no surveyor of the highways shall be appointed, then, and in every such case, the churchwardens and overseers of the poor of such parishes, townships, and places respectively, and in cases where neither surveyor, churchwardens, nor overseers of the poor shall be appointed, then such other inhabitant or inhabitants of such parish, township, or place as shall be thereto required by an order in writing made by the justices on application to them by the trustees or commissioners of the turnpike road, or by their clerk or surveyor, and respectively delivered to such churchwardens or overseers, or inhabitant or inhabitants, or left at his or their last or usual places of abode, shall deliver, or cause to be delivered, within ten days afterwards, to the said turnpike surveyor, or to his place of abode, true and perfect lists in writing of the names of the several persons who within such parish, township, or place are by law subject and liable to do statute work for that year, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts, or otherwise, and also the amount of the respective sums to be paid; which lists shall be made and used, and dealt with in the manner directed by the said recited Act and this Act; and the statute work shall be ordered and adjudged by the justices, and enforced and required, or compounded for, in the same way as if the said lists had been made and delivered by the surveyor of the highways, under the provisions and authorities of the said recited Act and this Act.

Regulation

LXXXII. And be it further enacted, That so much of the said

recited Act as directs, that the composition money in lieu of statute duty shall always be paid by the surveyor or surveyors of the highways, or other officer of the parish, hamlet, or place, or by the person or persons compounding, to the treasurer of the trustees or commissioners, in advance, on or before the twenty-ninth day of September in each and every year, or otherwise that such person or persons, bodies politic or corporate, or inhabitants and occupiers within such parish, hamlet, or place, shall not be permitted to compound for that year, shall be and the same is hereby repealed; and from and after the passing of this Act, all composition money in lieu of statute duty shall be paid by the person or persons compounding, to the treasurer of the trustees or commissioners, at such time or times and in such manner as shall be agreed upon at the entering into such composition (*f*).

ACTIONS.

of 3 G. 4, c. 126, s. 105, [ante, p. 83], that compositions for statute work be paid by Sept. 29, yearly, repealed; and such composition shall be paid according to agreements.

LXXXIII. And be it further enacted, That in all cases in which by the said recited Act any penalty or forfeiture, by that or any other Act or Acts for making or maintaining any turnpike road imposed, is made recoverable by information (*g*) before a justice of the peace, it shall and may be lawful for any justice of the peace to whom complaint shall be made of any offence against any such Act, or the said recited Act or this Act, to summon the party complained against before him, and on such summons (*h*) to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual, to all intents and purposes, as if an information in writing was exhibited.

Justices may proceed by summons in the recovery of penalties.

LXXXIV. And be it further enacted, That no person shall be deemed incompetent to give evidence, or be disqualified from giving testimony or evidence in any action, suit, prosecution, or other legal proceedings to be brought or had in any court of law or equity, or be-

Trustees, &c., may be witnesses.

(*f*) See notes in pp. 96, 101, 213, ante.

(*g*) See further as to the recovery of penalties, 3 G. 4, c. 126 s. 141, ante, p. 128,

(*h*) See Form of Summons, ante, p. 150.

EVIDENCE.

fore any justice or justices of the peace under or by virtue of any Act for making or maintaining any turnpike road, or the said recited Act or this Act, by reason of being a trustee or commissioner of such road, or a mortgagee or creditor of the tolls thereof, or a farmer, lessee, or collector of such tolls, or a treasurer, or clerk, or surveyor, or other officer under such Act; nor shall such testimony or evidence, for any of the reasons aforesaid, be rejected or liable to be questioned or set aside (i).

So much of 3 G. 4, c. 126, s. 142, [ante, p. 129,], as authorises mitigation of penalties, repealed.

LXXXV. And be it further enacted, That so much of the said recited Act as authorises any justice or justices of the peace, before whom any person shall be convicted of any offence against the said Act, or any Act for making or repairing turnpike roads, to mitigate or reduce the penalty incurred by such person, so as such reduction or mitigation do not exceed two-thirds of the penalty to which such person would be liable, shall be and the same is hereby repealed.

So much of 3 G. 4, c. 126, s. 145, [ante, p. 132,], as gives the power of appeal to quarter sessions, repealed.

LXXXVI. And be it further enacted, That so much of the said recited Act as enacts, that if any person shall think himself or herself aggrieved by anything done by any justice or justices of the peace in pursuance of this Act, except under the particular circumstances hereinafter mentioned, and for which no particular method of relief hath been already appointed, such person, in case the penalty or forfeiture shall exceed the sum of forty shillings, where the appeal is to be against a conviction for a penalty or forfeiture, may be made to the justices of the peace at the next general or quarter sessions of the peace to be held for the limit wherein the cause of such complaint shall arise, such appellant giving or causing to be given to such justice, by whose act or acts such person shall think himself or herself aggrieved, notice in writing of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint arose, and within four days after such notice entering into recognisances before some justice of the peace, with two sufficient sureties, conditioned to try such appeal at, and abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, and also to pay the penalty or forfeiture, in case the conviction should be affirmed; and each and every justice of the peace, having received notice of such appeal as aforesaid, shall return all proceedings whatever had before him respectively touching the matter of such appeal, to the said justices at their general quarter sessions aforesaid, on pain of forfeiting fifty

(i) See further as to evidence, 3 G. 4, c. 126, ss. 59, 134, 137, &c.; and see now 6 & 7 Vict. c. 85.

pounds for every such neglect; and the said justices at such sessions, upon due proof of such notice having been given as aforesaid, and of such recognizance having been entered into in manner before directed, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper, to be levied and recovered as hereinbefore directed, and the determination of such quarter sessions shall be final and conclusive to all intents and purposes; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or removed by certiorari, or any other writ or process whatsoever, into any of his Majesty's Courts of Record at Westminster; any law or statute to the contrary notwithstanding: Provided always, that in case there shall not be time to give such notice, and enter into such recognizances as aforesaid, before the next sessions to be holden after the conviction of the appellant, then, and in every such case, such appeal may be made to the next following sessions, and shall be there heard and determined, shall be and the same is hereby repealed.

APPEAL.

LXXXVII. Provided always, and be it further enacted, That if any person shall think himself or herself aggrieved by any order, judgment, or determination made, or by any matter or thing done by any justice

Persons aggrieved may appeal to quarter sessions (k).

(k) This section applies only to things done by justices, &c., not to an act done by a jury, as a finding under an inquisition: *Rex v. Norwich and Watton Road Trustees*, 5 Ad. & E. 577. It has been decided under it, that a magistrate's conviction is the subject of an appeal when the penalty exceeds 40s., and that the party appealed against is the informer so as to subject him to costs on quashing the conviction: *Rex v. Hants Justices*, 1 B. & Ad. 654; and also that the right of appeal in this case extends to a certificate of justices required under a local Turnpike Act, and that the decision of the sessions on an appeal against such certificate is final: *Rex v. Yorkshire, W. R. Justices*, 5 B. & Ad. 1003. On another statute, where the appeal was against an order of the magistrates, it was held that the cause of complaint did not arise until a copy of such order in writing had been served, and that notice of appeal within six days from that time was valid: *Rex v. Lancashire Justices*, 8 B. & C. 593, 2 Man. & R. 519. In an appeal against a warrant of distress, it was held, that the notice might be given within the limited number of days after the execution thereof, the party aggrieved not being bound by the date of the warrant; and where in the notice the matter of

APPEAL

or justices of the peace, or by any trustees or commissioners of any turnpike road in pursuance of this Act, or the said recited Act, or any local Act for making, repairing, or maintaining any turnpike road (except where the order, judgment, or determination of any such justice or justices, trustees or commissioners, are hereby declared to be final and conclusive, and except under the particular circumstances hereinafter mentioned), and for which no particular method of relief hath been already appointed, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the cause of such complaint shall arise, such appellant first giving or causing to be given to such justice, commissioner, or trustee, by whose act or acts such person shall think himself or herself aggrieved, notice in writing (*l*) of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint shall arise, and within four days after such notice entering into recognizances before some justice of the peace, with two sufficient sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall

the appeal was stated, it was held sufficient without assigning special causes: *Rex v. Devon Justices*, 1 M. & Sel. 411. It seems that the entering into a recognisance before the justices who make the order appealed against, will not dispense with the necessity of giving them notice of appeal: *Rex v. Salop Justices*, 4 B. & Ald. 626; but unless the general rule of sessions requires it, no notice of trial of a respited appeal is necessary, if the notice of appeal has been duly given in the first instance: *Rex v. Yorkshire, W. R. Justices*, 5 B. & Ad. 667; and see *Rex v. Norfolk Justices*, 3 N. & M. 55. Notice of appeal, served on Monday, against a conviction on the previous Monday was held too late: *Rex v. Middlesex Justices*, 2 Dowl., N. S., 719. As to an appeal being the proper remedy against an act of the trustees, see *De Beauvoir v. Welch*, 1 Man. & R. 81, 7 B. & C. 266; *Rex v. Kingston*, 8 East, 41.

(*l*) See Form of Notice of Appeal, Schedule to 3 G. 4, c. 126, No. 23, ante, p. 154; as to which see *Rex v. Yorkshire, W. R. Justices*, 7 B. & C. 676, 1 Man. & R. 547.

be awarded by the justices at such general or quarter sessions, and also to pay the penalty or forfeiture in case the conviction should be affirmed; and each and every justice of the peace, commissioner, or trustee, having received notice of such appeal as aforesaid, shall return all proceedings whatever had before him respectively, touching the matter of such appeal, to the said justices at their general or quarter sessions aforesaid; and the said justices at such sessions, upon due proof of such notice having been given as aforesaid, and of such recognizance having been entered into in manner before directed, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper, to be levied and recovered by distress and sale of the goods and chattels of the person or persons against whom such determination shall be given, and the determination of such general or quarter sessions shall be final and conclusive to all intents and purposes; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or removed by certiorari (*m*), or any other writ or process whatsoever, into any of his Majesty's Courts of record at Westminster; any law or statute to the contrary notwithstanding: Provided always, that in case there shall not be time to give such notice, and enter into such recognizances as aforesaid, before the next sessions to be holden after the conviction of the appellant, then and in every such case such appeal may be made to the next following sessions, and shall be there heard and determined: Provided always, that no appeal shall be al-

(*m*) The Court has on several occasions refused to grant a mandamus to re-hear an appeal under this section, even when there were strong reasons for believing that the decision of the sessions had been contrary to law: *Rex v. Yorkshire, W. R. Justices*, 5 B. & Ad. 1003, 3 Nev. & M. 86; and see *S. C.* 1 Ad. & E. 563, &c. See also 5 & 6 W. 4, c. 83, as to certioraris.

SAVING
CLAUSES.
—

Extending
powers of
former Act,
whereby not
hereby alter-
ed or repeal-
ed, to this
Act.

lowed against any conviction for any penalty or forfeiture which shall not exceed the sum of forty shillings (*n*).

LXXXVIII. And be it further enacted, That all the powers, authorities, provisions, regulations, privileges, penalties, forfeitures, clauses, restrictions, matters, and things whatsoever, contained in the said recited Act, so far as the same are not expressly altered or repealed by this Act, shall extend and be construed to extend to operate and be in force with respect to this Act, and shall be applied and put in execution, as fully and effectually to all intents and purposes, as if the same were repeated and re-enacted in the body of this Act, and were made part thereof; and the said recited Act and this Act shall, as to all matters and things whatsoever (except as aforesaid), be considered as one Act (*o*).

Schedule
No. 1. (Table
of Weights)
to be used
instead of
Schedule
No. 2, of re-
cited Act.

LXXXIX. And whereas the Schedule (No. 2), intituled "Table of Weights allowed in Winter and Summer to Carriages directed to be weighed, including the carriage and loading" (*p*), has been found defective; be it therefore enacted, That the said Schedule shall be and the same is hereby repealed; and the Schedule (No. 1) annexed (*q*) to this Act shall be made use of instead thereof.

3 G. 4, c. 126,
or this Act,
not to ex-
tend to cer-
tain roads.

XC. And whereas doubts have arisen as to the roads to which the provisions of the said recited Act extend; be it therefore enacted, That nothing in the said recited Act or this Act contained shall extend or be construed to extend to any road or roads not under the care and management of trustees or commissioners, or to any road or roads which shall be made, maintained, or supported under the provisions of any Act or Acts of Parliament passed for an unlimited period, notwithstanding tolls may be collected on such roads, or shall extend to affect, alter, or interfere with the qualifica-

(*n*) See note at p. 219, ante.

(*o*) See 3 G. 4, c. 126, s. 4; 9 G. 4, c. 77, s. 19, &c.

(*p*) See the table referred to in p. 139, ante.

(*q*) See this Schedule in p. 225, post.

tions of any commissioners or other persons having the care and management of any such last-mentioned roads, or with any tolls taken, or weights carried thereon, or in any other manner therewith.

XCI. Provided always, and be it enacted, That nothing in the said recited Act of the third year of the reign of his present Majesty, or in this Act contained, shall extend, or be deemed, construed, or taken to extend to an Act passed in the fifty-ninth year of the reign of his late Majesty, intituled "An Act for vesting in Commissioners the line of Road from Shrewsbury in the county of Salop to Bangor Ferry in the county of Carnarvon, and for discharging the Trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of his present Majesty, from the future Repair and Maintenance thereof, and for altering and repealing so much of the said Acts as affects the said line of Road;" nor to an Act passed in the same year, intituled "An Act to amend an Act passed in the fifty-fifth year of the reign of his present Majesty, for granting to his Majesty the sum of Twenty thousand Pounds towards repairing Roads between London and Holyhead, by Chester, and between London and Bangor, by Shrewsbury, and for giving additional Powers to the Commissioners therein named, to build a Bridge over the Menai Straits, and to make a new Road from Bangor Ferry to Holyhead in the county of Anglesea;" nor to any road or roads repaired, maintained, and supported under the powers and provisions of the said two last-mentioned Acts.

3 G. 4, c. 126, or this Act, not to extend to 59 G. 3, c. 30, or 59 G. 3, c. 48, or roads repaired under them (r).

XCII. Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed, adjudged, deemed, or taken to extend to the turnpike road called "The Commercial Road," or the several branches leading from and out of the same, authorised to be made, repaired, and maintained under and by virtue of five several Acts of Parliament, made and passed in the forty-third, forty-fourth, forty-sixth, forty-ninth, and fifty-first years of the reign of his late Majesty King George the Third, for making and maintaining the roads communicating with the West and East India Docks, and for repairing the Cannon Street Road, and for making and maintaining a new road to Barking, and a road from the Romford and Whitechapel Road to Tilbury Fort in the counties of Middlesex and Essex, and also for making a new branch of road from King David Lane, Shadwell, to the Essex Road at Mile End, in the county of Middlesex, or to affect, encroach upon, vary, alter, or interfere with any of the tolls, weights, or duties created by virtue of the said Acts or any of them, or any of the powers and

Act not to extend to the Commercial Road.

(r) See nearly similar saving clauses in 3 G. 4, c. 126, s. 149, ante, p. 135.

**SAVING
CLAUSES.**

Certain part
of road from
Carlisle to
Glasgow to
be subject to
General
Act (s).

Act may be
altered or
repealed this
session.

authorities given to or vested in the trustees acting under or by virtue of the said Acts, or any or either of them.

XCIII. Provided always, and be it further enacted, That so much of the turnpike road from Carlisle to Glasgow as lies in the county of Cumberland shall, from and after the passing of this Act, be subject to the regulations, powers, and provisions of the said Act passed in the third year of the reign of his present Majesty, and this Act, so far as the same respects nuisances, annoyances, and trespasses; and the justices of the peace acting for the county of Cumberland are hereby authorised and empowered to enforce all penalties for nuisances, annoyances, and trespasses on the said road, within the said county of Cumberland.

XCIV. And be it further enacted, That this Act may be altered, varied, or repealed by any Act to be passed in this present session of parliament.

(s) See ante, p. 135.

SCHEDULES

TO WHICH THIS ACT REFERS.

No. 1.

TABLE OF WEIGHTS ALLOWED IN WINTER AND SUMMER TO CARRIAGES DIRECTED TO BE WEIGHED (INCLUDING THE CARRIAGE AND LOADING), BY THE ACT OF THE FOURTH GEORGE THE FOURTH.

[Referred to in sect. 89, ante, p. 222.]

	SUMMER.	WINTER.
	Tons. Cwts.	Tons. Cwts.
For every waggon with nine-inch wheels	6 10	6 0
For every cart with nine-inch wheels -	3 10	3 0
For every waggon with six-inch wheels -	4 15	4 5
For every cart with six-inch wheels -	3 0	2 15
For every waggon with wheels of the breadth of four inches and a half -	4 5	3 15
For every cart with wheels of the breadth of four inches and a half - - -	2 12	2 7
For every waggon with wheels of less than four inches and a half - - -	3 15	3 5
For every cart with wheels of less than four inches and a half - - -	1 15	1 10

SCHEDULE

No. 2.

[Referred to in 4 G. 4, c. 95, ss. 77 and 80, pp. 210, 215(a).]

A LIST, CONTAINING THE NAMES OF ALL PERSONS IN THE PARISH OR PLACE OF — IN THE — WHO ARE
LIABLE TO DO STATUTE WORK, AND TO THE PAYMENT OF COMPOSITION IN LIEU THEREOF, FOR THE
YEAR COMMENCING FROM —.

(Signed)

—, Surveyors of the said Parish or Place.

1.	2.	3.	4.	5.	6.	7.
Names of Persons liable.	No. of Horses kept.	Full Annual Value.	Rate of Composition.	Total Amount liable in Money.	No. of Days Duty Work.	General Observations.
		£ s. d.				

(a) See the notes on the pages referred to.

5 GEO. IV. CAP. 69.

An Act to enable Justices of the Peace for Ridings, Divisions, or Sokes, to act as Trustees for repairing and maintaining Turnpike Roads.

[17th June, 1824.]

WHEREAS an Act was passed in the third year of the reign of his present Majesty, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England:" and whereas one other Act was passed in the fourth year of the reign of his said present Majesty, intituled "An Act to explain and amend an Act passed in the third year of the reign of his present Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England;" and by the said first recited Act (a) it was amongst other things enacted, That all his Majesty's justices of the peace for the time being, acting for the county or counties through which any turnpike road now does or hereafter shall pass, shall be added to and joined with the trustees or commissioners for making, repairing, or maintaining every such turnpike road, and shall have all the same powers and authorities, to all intents and purposes, as if the said justices had severally been named or elected trustees or commissioners in or under any Act or Acts of Parliament under which such roads shall be made, repaired, or maintained: and whereas it is expedient that his Majesty's justices of the peace acting for any riding, division, or soke, should also be enabled to act as trustees for the repair of turnpike roads: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament as- Justices acting for ridings or divisions, &c., shall have the like

(a) 3 G. 4, c. 126, s. 61, ante, p. 50; see also 4 G. 4, c. 95, s. 34, ante, p. 177.

ROAD
PROPERTY.
—
powers as
justices for
counties.

sembled, and by the authority of the same, That, from and after the passing of this Act, all his Majesty's justices of the peace for the time being, acting for the county or counties, riding or ridings, division or divisions, soke or sokes, through any part of which any turnpike road now does or hereafter shall pass, shall have such and the like powers and authorities for the making and repairing any such turnpike road, and be subject to the same rules and regulations, by virtue of or under the said recited Acts, as any of his Majesty's justices of the peace acting for any county or counties (b).

7 GEO. IV. CAP. 64, s. 17, and part of s. 32.

An Act for improving the Administration of Criminal Justice in England.

[26th May, 1826.]

Property of
turnpike
trusts may
be laid in
the trustees.

XVII. AND with respect to property under turnpike trusts be it enacted, That in any indictment or information (c) for any felony or misdemeanor committed on or with respect to any house, building, gate, machine, lamp, board, stone, post, fence, or other thing erected or provided in pursuance of any Act of Parliament for making any turnpike road, or any of the conveniences or appurtenances thereunto respectively belonging, or any materials, tools, or implements, provided for making, altering, or repairing any such road, it shall

(b) The word "counties" includes "ridings;" 7 & 8 G. 4, c. 24, s. 19.

(c) It is a matter of doubt whether the word *information* in this section extends to informations before justices on summary proceedings: *Burn's Justice*, citing *Davies v. Bird*, Car. C. L. 34; S. C., 5 D. & R. 353. If a person employed by a lessee of turnpike tolls to collect tolls lives in the toll-house rent free, the property in the house in an indictment for burglary may be laid in the person so employed by the lessee, he having the exclusive possession, and the toll-house not being parcel of any premises occupied by his employer: *Rex v. Camfield*, 1 Moo. C. C. 42.

be sufficient to state any such property to belong to the trustees or commissioners of such road, and it shall not be necessary to specify the names of any such trustees or commissioners.

TRUSTEES.
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XXXII. (*in part*). And be it further enacted, That from and after the commencement of this Act,—so much of an Act passed in the same year (3 G 4), intituled “An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England,” as relates to stating in any indictment any things to be the property of the clerk to the trustees or commissioners as therein mentioned, shall be and the same is hereby repealed;—except so far as any of the said Acts relate to Scotland or Ireland, or repeal the whole or any part of any other Acts, and except as to offences committed before the passing of this Act, which shall be dealt with and punished as if this Act had not been passed.

Repeal of so much of 3 G. 4, c. 126, s. 60, [*ante*, p. 42,], as relates to indictments, &c.

7 & 8 GEO. IV. CAP. 24.

An Act to amend the Acts for regulating Turnpike Roads in England.

[14th June, 1827.]

WHEREAS an Act was passed in the third year of the reign of his present Majesty, intituled “An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England:” and whereas another Act was passed in the fourth year of the reign of his present Majesty, intituled “An Act to explain and amend an Act passed in the third year of the reign of his present Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England;” and which said Acts require to be further explained and amended: and whereas by the said first recited Act (*d*), it is among other things provided and enacted, that no person appointed as trustee in or by virtue of any Act for repairing turnpike roads shall be capable of acting as such in the execution of any such Act in any case where he shall be personally interested;

3 G. 4, c. 126.

4 G. 4, c. 95.

LIABILITY OF TRUSTEES.

Owners of estates, &c., not to be disqualified as interested persons.

and doubts have arisen with regard to such person's liability; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, That no trustee of any turnpike road shall be deemed or taken to be personally interested, by reason of his having acted as a trustee in ordering the making, altering, or diverting any turnpike road over or contiguous to any lands, tenements, or hereditaments in his possession or occupancy, or by reason of his having received any sum or sums of money out of the tolls of any such road as or by way of purchase-money, damages, rent, recompence, or satisfaction, agreed upon or awarded to such trustee for any lands, tenements, or hereditaments, or any timber or wood, or materials purchased or taken for the purpose of making, diverting, or altering, or for the use of the road for which he shall act as a trustee, or for a repository for materials to be used thereon, or for the damage done to any inclosed or private lands or grounds of any such trustee, in taking materials therefrom, or in carrying or conveying them over the same (e).

Trustees personally liable for money expended on roads not in trust.

II. And be it further enacted, That every trustee who shall order or direct the expenditure of any money for or towards the making, repairing, or altering any road not comprehended within the Act in the execution of which he may be acting, or for or towards the performance of any act, matter, or thing not authorised by such Act, or by the said recited Acts, such trustee shall be personally liable (f) to the trust for the

(e) Or by reason of his being a creditor of, or receiving interest out of, the tolls. See 3 G. 4, c. 126, s. 64, ante, p. 53. Or by reason of his being a proprietor of shares in any contracting canal or railway company. See 4 G. 4, c. 95, s. 37, ante, p. 178. See also 3 G. 4, c. 126, s. 65, ante, p. 54; and the case of *Towsey v. White*, 7 D. & R. 810, 5 B. & C. 125.

Personal responsibility.

(f) The object of this and the following section is to limit the personal liability of trustees to the repayment of money which

repayment of the money so expended, at the suit of any person, or any one trustee, or of the clerk to such

LIABILITY OF
TRUSTEES.

they may order to be expended on any road not comprehended in their own trust, or in or about any act which they are not authorised to do by the statute under which they are appointed. The 4 G. 4, c. 95, s. 61, also directs that trustees shall not be personally liable by reason of having signed any security for payment of money; and by 3 G. 4, c. 126, s. 74, and 4 G. 4, c. 95, s. 71, all expenses to which trustees may become liable by reason of defending any action shall be reimbursed out of the tolls. Notwithstanding these provisions, questions have not unfrequently come before the Court with a view of fixing the trustees personally with damages, &c. A collection of cases on this subject will be found in the Appendix. The principle upon which the later decisions appears to have turned is this: that a trustee acting as such, under the authority of an Act of Parliament, is not personally liable for acts authorised by the statute to be done, nor for any consequential damages arising from such acts, whether contemplated by the statute or not, and particularly if any other remedy is provided by the statute; yet if they commit injuries without any colourable sanction from the statute, or if in the performance of any act which they are authorised to do, they behave arbitrarily, wantonly, or oppressively, or even so carelessly and negligently as to cause a consequential damage which might well have been avoided, it seems that, in such a case, they will be personally liable to an action for the injury they inflicted. See *Lloyd v. Wigney*, 6 Bing. 489; *Sutton v. Clarke*, 6 Taunt. 29; 1 Marsh. 429; *Harris v. Baker*, 4 M. & Sel. 27; *Jones v. Bird*, 5 B. & Ald. 837; *Moxon v. Loader*, 2 W. Bl. 924; *Boulton v. Crowthor*, 2 B. & C. 703, 4 D. & R. 195; *Humphreys v. Mears*, 1 Man. & R. 187; *Cast Plate Manufacturers v. Meredith*, 4 T. R. 794; *Duncan v. Findlater*, 6 C. & F. 794; *Reedie v. North Western Railway Company*, 4 Exch. 244. So, with regard to contracts, when trustees confine themselves to the Act of Parliament and the application of the Parliamentary funds, they are not personally liable; but this also rests on the strong principle, that, as the trustees must know whether there are funds to carry on the work when they contract with those who do not know, they are to be considered as representing that there are funds, and are bound to provide funds to pay the contractors. Per Lord Eldon, in *Higgins v. Levingstone*, 4 Dow, P. C., 341. And it is important that the trustees should

ty of trustees.

LIABILITY OF TRUSTEES.
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trustees, on behalf of such trust; and that all the costs and charges of such suit, over and above any costs and charges recovered from the defendant in such suit, shall be paid and borne by such trust.

No trustee to be personally liable as such.

III. And be it further enacted, That no trustee shall be personally subject or liable (*g* to be charged (except as next hereinbefore mentioned) with the payment of any sum or sums of money, laid out or expended in or towards the making, repairing, or altering any turnpike road, nor shall execution issue against the goods and chattels of any trustee, by reason of his having acted as such trustee, or having signed or authorised or directed any contract or security to be entered into relating to any such road, unless in such contract or security such trustee shall have, in express words, rendered himself so personally liable.

Treasurer and clerk not to be the same person.

IV. And be it further enacted, That it shall not be lawful for any trustees to continue or appoint the person who has been or may be appointed their clerk, in the execution of any Act for repairing or maintaining

also be aware, that, notwithstanding the above enactments, they may yet make themselves personally liable for money borrowed by them for the use of the road of which they are trustees, unless they are careful to give the security directed by the Act. The case of *Parrott v. Eyre*, 3 M. & Sc. 857, 10 Bing. 283, in which this point was decided upon the above section, and which will be found set out at some length in the Appendix, is particularly deserving of attention; and see *Rex v. Kingston*, 8 East, 41; *Cane v. Chapman*, 5 Ad. & E. 647; *Beckett v. Wilson*, 10 L. J., C. P., 325; *Miles v. Bough*, 3 Q. B. 845. And although the trustees themselves may not be liable to make compensation for damages occasioned by acts ordered by them to be done which are within the scope of their authority if they proceed with sufficient caution, it would seem that the agents appointed by them to execute such acts may be answerable for any negligence in their performance. See *Hall v. Smith*, 2 Bing. 156; *Allen v. Hayward*, 7 Q. B. 960.

(*g*) That, without this provision, the trustees might have been personally liable, see *Horsley v. Bell*, Amb. 769, 1 Bro. C. C. 101.

any turnpike road, or the partner of any such clerk, *or the clerk or other person in the service or employ of any such clerk or of his partner*, the treasurer for the purposes of such Act, or to continue or appoint any person who has been or may be appointed treasurer, or the partner of any such treasurer, *or the clerk or other person in the service or employ of any such treasurer or of his partner*, the clerk for the purposes of such Act; and if any person shall accept both the offices of clerk and treasurer for the purposes of such Act, or if any person being the partner of any such clerk, or the clerk or other person in the service or employ of any such clerk or of his partner, shall *accept* the office of treasurer, or shall act as *deputy* of the treasurer, or in any manner officiate for the treasurer, or being the partner of any such treasurer, or the clerk or other person in the service or employ of any such treasurer or of his partner, shall *accept* the office of clerk in the execution of such Act, or shall act as *deputy* of such clerk, or in any manner officiate for such clerk, *or if any such treasurer shall hold any place of profit or trust under the said trustee other than that of treasurer*, every such person so offending shall, for every such offence, forfeit and pay the sum of *one hundred pounds (h)* to any person who shall sue for the same, to be recovered, with full costs of suit, in any of his Majesty's courts of record at Westminster, by action of debt or on the case, or by bill, suit, or information, wherein no essoign,

CLERK AND
TREASURER.
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(h) A penalty of 50*l.* was imposed by 3 G. 4, c. 126, s. 71, on any person acting both as treasurer and clerk. The penalty is now increased to 100*l.*; and the present clause varies from the former where the words are in *italics* (see ante, p. 60). The object of this restriction is said to be, that the clerk and treasurer, being separate persons, may be checks on each other. As to the security required to be given by the treasurer, see 3 G. 4, c. 126, s. 76; and as to when damages may be levied on goods in the hands of the treasurer or trustees, see 4 G. 4, c. 95, s. 71; *Wormwell v. Hailstone*, 6 Bing. 668; *Cane v. Chapman*, 5 Ad. & E. 661; *Harrison v. Timmins*, 4 M. & W. 510; *Emery v. Day*, 1 C. M. & R. 245, 4 Tyr. 695.

LAMPS.

protection, wager of law, nor more than one imparlance shall be allowed.

Power to
remove toll-
gates, &c.

[Repealed by
9 G. 4, c. 77,
s. 4.]

V. And be it further enacted, That it shall be lawful for the trustees of any turnpike road, and they are hereby authorised and empowered, from time to time, at any special meeting to be holden for that purpose, of which meeting public notice, specifying the time and place for holding such meeting and the purpose thereof, shall have been given in some newspaper published or circulated in the county or counties through which such turnpike road passes, and also by affixing a copy of such notice on all the turnpikes, toll-gates, and side-bars which shall be then standing on such road, fourteen days previously to such meeting, to order and direct any of such turnpikes, toll-gates or side-bars to be removed and placed elsewhere, upon, across, or by or on the sides of such road, in such situations as to them the said trustees may appear fit or eligible; subject always to the provisoes and restrictions contained in any Act for making or maintaining any such turnpike road.

Lamps to be
lighted at
toll-houses.

VI. And be it further enacted, That it shall be lawful for the trustees to order and direct one or more lamp or lamps to be placed and erected on or against or in front of each and every of the toll-houses on the road, and also to order and direct at what times of the year and during what hours such lamp or lamps, or any of them, shall be kept lighted; and all and every the collector and collectors of the tolls on such road, and also all and every the lessees or lessee thereof, who shall neglect or omit to observe and fulfil the order of the said trustees in respect to the keeping and lighting of such lamp or lamps, shall forfeit and pay any sum not exceeding twenty shillings for every such neglect or omission; and in case any person shall damage or injure any lamp or lamps to be placed and set up as aforesaid, or extinguish the lights therein, such person shall forfeit and pay any sum not exceeding forty shillings for every such offence (i).

For payment
of mortgages
on land pur-
chased.

VII. And be it further enacted, That, if any lands, tenements, or hereditaments, which shall be purchased

(i) See also 3 G. 4, c. 126, s. 121, ante, p. 113. This clause leaves it in the discretion of the trustees to determine whether any and what lamps are requisite: *Harris v. Baker*, 4 M. & Sel. 27.

for the purposes of any Act for making or maintaining turnpike roads, shall be in mortgage to any person, then, and in such case, the trustees shall and they are hereby required to pay, or cause to be paid, to the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, upon application in writing made to the trustees or their clerk, signed by such mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, such sum or sums of money as shall be agreed for, ascertained, and determined, for the purchase of such lands, tenements, or hereditaments, or a competent part thereof; and such sum or sums of money, when so paid, shall be and be deemed to be in discharge of the principal money, or part thereof, due on such mortgage or mortgages, and acknowledgment of the receipt thereof shall be made by indorsement on the mortgage deed or deeds, signed by such mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, in the presence of one or more credible witness or witnesses; and such indorsement shall be and be deemed to be a full and sufficient discharge to the trustees from the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, and also a full and sufficient discharge to the mortgagor or mortgagors, his, her, or their heirs, executors, administrators, or assigns, from the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, for so much money as shall be expressed in such indorsement.

ACQUIRING
LANDS.
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VIII. And be it further enacted, That so much of the said Act of the third year of the reign of his present Majesty, as directs the application of compensation money for lands, tenements, or hereditaments purchased for the purposes of any Act for making or maintaining turnpike roads, shall be and the same is hereby repealed (*k*).

Repeal of
certain pro-
visions re-
specting ap-
plication of
compensa-
tion money.

(*k*) The clauses repealed are 3 G. 4, c. 126, ss. 90, 91, 92, 93, 94, 95. The new provisions (ss. 9, 10, 11, 12, 13, 14,) are similar to those repealed, except that in this Act the Court of Exchequer is substituted for the Court of Chancery (see now 5 Vict. c. 5); and a power is given (sect. 7) in the first instance, to pay off money due on mortgage, which was not contained in the former

ACQUIRING
LANDS.

Application
of compensa-
tion when
amounting
to 200%.

1 G. 4, c. 35.

IX. And be it further enacted, That, if any money shall be agreed or awarded to be paid for any lands, tenements, or hereditaments, purchased, taken, or used by the trustees, which shall belong to any body politic, corporate, or collegiate, corporation aggregate or sole, infant, lunatic, tenant for life or in tail, general or special, feoffee in trust, guardian, committee, trustee, feme covert, or other incapacitated person, such monies shall, if the same amount to the sum of two hundred pounds, with all convenient speed be paid into the bank of England, in the name and with the privity of the accountant general of the Court of Exchequer, to be placed to his account, *ex parte* the trustees for executing such Act, pursuant to the method prescribed by an Act passed in the first year of the reign of King George the Fourth, intituled "An Act for the better securing the Monies and Effects paid into the Court of Exchequer at Westminster, on account of the Suitors of the said Court, and for the Appointment of an Accountant General and two Masters of the said Court, and for other purposes," and the general orders of the said court, and without fee or reward; and such money, when so paid in, shall be applied, under the direction and with the approbation of the said court, to be signified by an order to be made upon a petition to be preferred in a summary way by the person who would have been entitled to the rents and profits of the said lands, tenements, or hereditaments, in the purchase of the land tax, or the discharge of any debt or debts, or such other incumbrances, or part thereof, as the said court shall authorise to be paid affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments, standing settled therewith to the same or the like uses, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the direction and appro-

Act. For the trustees' authority to purchase and take lands, &c. for the use of the roads (to which the above provisions refer) see 3 G. 4, c. 126, ss. 84, 85, 86, 87, 102; 4 G. 4, c. 95, ss. 55, 56, 65.

bation of the said court, in the purchase of other lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner as the lands, tenements, or hereditaments, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing, undetermined and capable of taking effect; and in the meantime, and until such purchase shall be made, the said money shall, by order of the said court upon application thereto, be invested by the said accountant general, in his name, in the purchase of Three Pounds *per centum* Consolidated, or Three Pounds *per centum* Reduced Bank Annuities; and in the meantime, and until the said Bank Annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said Consolidated or Reduced Bank Annuities shall, from time to time, be paid, by order of the said court, to the person who would for the time being have been entitled to the rents and profits of the said lands, tenements, or hereditaments so purchased, in case such purchase or settlement were made.

ACQUIRING
LANDS.
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X. Provided always, and be it further enacted, That, if any money so agreed or awarded to be paid for any lands, tenements, or hereditaments, purchased, taken, or used, and belonging to any person under any disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds and shall exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person for the time being entitled to the rents and profits of the lands, tenements, and hereditaments so purchased, taken, or used, or of his guardian or guardians, committee or committees, in case of infancy, idiotcy, or lunacy, to be signified in writing under their respective hands, be paid into the Bank of England, in the name and with the privity of the said accountant general of the Court of Exchequer. and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise

Application
when under
200*l.* and
above 20*l.*

ACQUIRING
LANDS.

the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the trustees taking such lands, tenements, or hereditaments (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money and the dividends and interest arising thereon may be applied in manner hereinbefore directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the said Court of Exchequer.

When less
than 20*l*.

XI. Provided also, and be it further enacted, that where such money so agreed or awarded to be paid as hereinbefore mentioned shall be less than the sum of twenty pounds, then and in all such cases the same shall be applied to the use of the corporation or person who would for the time being have been entitled to the rents and profits of the lands, tenements, or hereditaments so purchased, taken, or used, in such manner as the trustees taking such lands, tenements, or hereditaments shall think fit; or in case of infancy, idiotcy, or lunacy, then to his guardian or guardians, committee or committees, to and for the use and benefit of such person so entitled respectively.

In case of
not making
out title, or
persons not
being found.

XII. And be it further enacted, That in case the corporation or person to whom any sum or sums of money shall be awarded, for the purchase of any lands, tenements, or hereditaments, shall refuse to accept the same, or shall not be able to make a good title to the premises to the satisfaction of the trustees, or in case the person to whom such sum or sums of money shall be so awarded cannot be found, or if the person entitled to such lands, tenements, or hereditaments be not known or discovered, then and in every such case (l) it shall be lawful for the said trustees to order the said sum or sums of money to be paid into the Bank of England, in the name and with the privity of the accountant general of the said Court of Exchequer, to be

(l) See *Reg. v. Deptford Pier Company*, 8 A. & E. 910.

placed to his account, to the credit of the parties interested in the said lands, tenements, or hereditaments (describing them), subject to the order, control, and disposition of the said Court of Exchequer; which said court, on the application of any person making claim to such sum or sums of money, or any part thereof, by motion or petition, shall and is hereby empowered, in a summary way of proceeding or otherwise, as to the same court shall seem meet, to order the same to be laid out and invested in the public funds, and to order distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest, of the person making claim thereto, and to make such other order in the premises as to the said court shall seem just and reasonable; and the cashier or cashiers of the Bank of England, who shall receive such sum or sums of money, is and are hereby required to give a receipt or receipts for such sum or sums of money, (mentioning and specifying for what and for whose use the same is or are received) to such person as shall pay any sum or sums of money into the Bank as aforesaid.

ACQUIRING
LANDS.
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XIII. Provided always, and be it further enacted, That where any question shall arise touching the title of any corporation or person to any money to be paid into the Bank of England in the name and with the privity of the accountant general of the Court of Exchequer, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments, or of any bank annuities to be purchased with any such money, or to the dividends or interest of any such bank annuities, the person who shall have been in possession of such lands, tenements, or hereditaments at the time of such purchase, and all persons claiming under such person, or under the possession of such person, shall be deemed and taken to be lawfully entitled to such lands, tenements, or hereditaments, according to such possession, until the contrary shall be shewn to the satisfaction of the said Court of Exchequer; and the

Persons in
possession
presumptive-
ly entitled.

ACQUIRING
LANDS.
—

dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person was lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

The Court may order reasonable expenses of purchases to be paid.

XIV. Provided also, and be it further enacted, That where, by reason of any disability or incapacity of the corporation or person entitled to any lands, tenements, or hereditaments, the purchase-money for the same shall be required to be paid into the said court, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses, it shall be lawful for the said court to order the expenses of all purchases from time to time to be made in pursuance of this Act (*m*), or so much of such expenses as the said court shall deem reasonable, together with the necessary costs and charges of obtaining such order, to be paid by the trustees taking any such lands, tenements, or hereditaments, who shall from time to time pay such sums of money for such purposes as the said court shall direct.

Justices to award for materials no larger sum than they could actually be sold for.

XV. Provided always (*n*), and be it enacted, That the trustees shall not be required to pay any larger sum as a satisfaction for any materials raised, taken, or carried away from any lands or grounds, for making or repairing any turnpike road, than such sum of money as it shall appear to the two justices settling and determining such satisfaction that such materials might or

(*m*) It seems this includes the expenses of investing the money in the funds previously to its being laid out in lands, &c.: *Ex parte Bishop of Durham, in re Newcastle Railway Company*, 3 Y. & C. 690.

(*n*) This provision has reference to the powers of obtaining materials for the use of turnpike roads, granted to surveyors by 3 Geo. 4, c. 126, s. 97—99, ante, pp. 88—90.

could have been actually sold for in case the same had not been raised, taken, or carried away by such trustees; and in case the said justices shall be of opinion that the said materials, before they had been so raised, taken, or carried away, could not have been sold or disposed of, then the said justices shall only assess the damage done to the lands or grounds of the owners or occupiers thereof, by the raising, gathering, or carrying away the same.

INJURING
FOOT-PATHS,
&c.
—

XVI. And be it further enacted, That if any person shall injure, damage, incumber, ride upon, drive upon, or otherwise use any public footpath or causeway, by the side of and adjacent to any turnpike road, to the prejudice, annoyance, interruption, or personal danger of any person travelling thereon, every person so offending shall be liable to the same penalties in respect of such offences as by the Acts hereinbefore recited are imposed in respect to such offences (*o*), whether such footpath or causeway be made, maintained, and repaired by the trustees of the turnpike road thereunto adjoining, or by the inhabitants of the parish wherein such footpath or causeway is situated, or by any other person whatever.

Persons in-
juring foot-
paths liable
to the penal-
ties of recited
Acts, whe-
ther repaired
by trustees
of the road,
or by the
parish.

XVII. And be it further enacted, That, where any part or parts of any turnpike road, or any bridges (*p*), arches, drains (*q*), or sewers, lying in and upon such road, have been accustomed or ought to be repaired and maintained by any particular person, body politic or corporate, by reason of the tenure of any lands, tenements, or hereditaments, or otherwise, or by any county or any parish (*r*), or where any composition has been

Lands liable
to repair of
roads,
bridges, &c.,
to continue
so.

(*o*) 3 G. 4, c. 126, s. 121, ante, p. 113. See Form of Conviction on this section, Appendix, No. 77.

(*p*) As to the repair of bridges, see 3 G. 4, c. 126, s. 107, and note thereon, ante, p. 98.

(*q*) As to the repair of drains, see 3 G. 4, c. 126, s. 113, and 4 G. 4, c. 95, s. 67.

(*r*) It seems agreed, that, of common right, that is, by the common law, the general charge of repairing all highways lies on the occupiers of the land in the parish wherein they are:

Obligation to
repair high-
ways.

OBLIGATION
TO REPAIR.

entered into or made in lieu thereof, all and every such part or parts of such road, and all such bridges, arches,

1 Roll. Ab. 390; *Rex v. Inhabitants of Marton*, Andr. 276; *Rex v. Parish of Ragley*, 12 Mod. 409; *Rex v. Great Broughton*, 5 Burr. 2700. And if others, before liable, become unable to effect the repairs, or be by statute exempted therefrom, the liability reverts to the parish: *Young v. ———*, 1 Ld. Raym. 725; *Rex v. Inhabitants of Sheffield*, 2 T. R. 106. And the parish cannot, by any act of their own, relieve themselves from their responsibility to repair: 1 Vent. 90; *Rex v. Mayor, &c., of Liverpool*, 3 East, 86. Nor does a statute directing a particular street to be under the care of commissioners, take away the responsibility of the parish, in the first instance, to see the street properly repaired, the parish being, in such case, left to their remedy against the commissioners: *Rex v. Inhabitants of St. George, Hanover Square*, 3 Camp. 222. Even where a highway has been converted into a turnpike road, and placed under the management of trustees, with power to collect tolls, it has been holden that the parish was the only party liable to be indicted, and that they must seek their remedy against the trustees: *Rex v. Inhabitants of Netherthong*, 2 B. & Ald. 179; and see *Rex v. Inhabitants of Oxfordshire*, 4 B. & C. 194; *Anon. Lofft*, 465. It has been doubted, however, whether a parish can be bound by prescription to repair highways in another parish, for individuals in a parish cannot bind their successors: *Rex v. Inhabitants of St. Giles, Cambridge*, 5 M. & Sel. 260; and if a way, from the repair of which the parish (or, if it be a bridge, the county) is exempted by reason of others being bound thereto by prescription, be enlarged, it seems that those who were liable by the prescription shall not have their burthen increased on account of such enlargement, but that the repairs of the new part of the way shall be made at the expense of the parish or county, as the case may be: *Rex v. West Riding of Yorkshire*, 2 East, 353, note; and see 4 G. 4, c. 95, s. 68. But though the parish is thus, *prima facie*, liable to repair all the highways running through it, the burthen may be thrown on others by the operation of various causes. A township, being part of a parish, may, by *prescription*, become chargeable for the maintenance of all the highways within its own boundary: *Rex v. Inhabitants of Ecclesfield*, 1 B. & Ald. 348; *Rex v. Inhabitants of Machynlleth and Pennegoes*,

drains, and sewers, shall from time to time be maintained and kept in repair by such person, body politic

OBLIGATION
TO REPAIR.
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2 B. & C. 166; and mere usage, without the averment of any consideration, will suffice to bind a township or district to the repair of both ancient and modern ways within its own boundary, under the plea of a general custom: *Rex v. Inhabitants of Hatfield*, 4 B. & Ald. 75. Particular persons may likewise be charged with the repair of immemorial highways by prescription, but not without consideration, nor merely by removing an encroachment, and repairing the highway once: 13 Co. 33; Hawk. b. 1, c. 76, s. 8; *Rex v. Skinner*, 5 Esp. 219; and a corporation, sole or aggregate, may be bound to repair, by usage or prescription, without consideration: Hawk. b. 1, c. 76, s. 8. An individual may also be bound, in respect of inclosure, to repair a highway, (i. e.) if the owner of the soil inclose any highway which traverses his land, and was before uninclosed (except under the authority of an Act of Parliament), he thereby renders himself liable to maintain in good repair so much of the highway as he has inclosed: *Sir Edward Duncombe's case*, Cro. Car. 366; 3 Atk. 772; *Rex v. Flecknow*, 2 Ld. Ken. 261; 1 Burr. 465; and see *Rex v. Commissioners of Llandillo*, 2 T. R. 232. As to whether an extra-parochial hamlet is bound to repair its highways, see *Rex v. Kingsmoor* (in error), 3 D. & R. 398; 2 B. & C. 190.

The question as to the liability of the parish to repair *turnpike roads* has been brought before the Court on various occasions, and is only imperfectly understood. Mr. Wellbeloved, in his excellent Treatise on Highways, &c., says, that highways are converted into turnpike roads through the application of a new principle; and that one of the points of this innovation upon the old law consists in the “*suspension* of the liability of the parish to the repairs of the road, except by the performance of their statute labour.” There is, however, no absolute legal suspension of this liability. Notwithstanding the roads are put under the management of trustees, who are authorised to collect tolls for maintaining them, the above section expressly continues the liability to repair upon the parish or party previously liable: and see 4 G. 4, c. 95, s. 80. And in the above cited case of *Rex v. Inhabitants of Netherthong*, it was decided, that if a highway which has been converted into a turnpike road is out of repair, the trustees are not liable by way of indictment, and that the only

Obligation to
repair turn-
pike roads.

OBLIGATION
TO REPAIR.

and corporate, county or parish, or such composition shall be paid, in such manner as the same were respectively maintained and kept in repair or paid before the

persons who are so liable are the inhabitants of the parish or other district in which the road is situated; such parish or district being left to seek their remedy over against the trustees. The tolls raised by trustees are, in fact, considered only as auxiliary funds, and do not exonerate the parish from their common law liability. See *Rex v. Inhabitants of Oxfordshire*, 4 B. & C. 194. The trustees are bound to apply the funds for the purposes mentioned in the respective Acts by which they are appointed, (see 9 G. 4, c. 77, s. 7, &c.); and by 3 G. 4, c. 126, s. 109, the justices are authorised to summon the surveyor of any turnpike road and ascertain the state of the revenues of such road; and by 5 & 6 W. 4, c. 50, they are also authorised to make an order upon such surveyor to repair such road, unless the obligation to repair is disputed. But if the trustees have not in their hands sufficient funds applicable to the repair of the roads, it is still incumbent on the parish to see that they are kept in repair. See the cases set out at length in the Appendix. Should the road be indicted, however, the Court before which the indictment is preferred is empowered to apportion the fine or costs between the parish and the trustees, in such proportions as shall, under the circumstances, seem just: 3 G. 4, c. 126, s. 110. And in the case of new roads made by turnpike trustees, it has been decided, that before a parish can be called upon to repair them, the trustees must at least have completed the roads according to the local Act; and it has been doubted whether an acquiescence on the part of the public is not also required: *Rex v. Hepworth*, tried before Hullock, B., at the York Assizes, 1829; *Rex v. Inhabitants of Cumberworth*, 3 B. & Ad. 108; *Rex v. St. Benedict*, 4 B. & Ald. 447; *Rex v. Mellor*, 1 B. & Ad. 32; *Rex v. Winter*, 8 B. & C. 785; but see *Rex v. Leake*, 5 B. & Ad. 469, 2 Nev. & M. 583; *Reg. v. East Mark*, 11 Q. B. 877; *Reg. v. Lordsmere*, 15 Q. B. 689. The 4 G. 4, c. 95, s. 80, &c., requires the application of a portion of the statute duty, or composition in lieu of statute duty, towards the repair of turnpike roads in places through which such roads may pass; but as all the enactments requiring statute duty on parish highways are now repealed, the questions between parishes and trustees will be considerably narrowed.

passing the said recited Acts (s), or of any local Act for making or maintaining any turnpike road.

CONSTRUCTION OF TERMS.

XVIII. And be it further enacted, That all mines of iron, tin, lead, copper, coal, and other minerals whatsoever, which shall be discovered or found in or under any land to be used for any turnpike road, shall be and they are hereby reserved to the person, body politic, corporate, or collegiate, who would have been seised of or entitled to the same, in case the Act for making such road had not been passed (t), with liberty for him or his agents or servants to dig for, mine, and work the same, in such manner as is usual for carrying on works of that kind in the county, district, or place where such mines shall be found, in as full and ample a manner as if the said land had not been taken and appropriated for the purposes aforesaid, so that in the working thereof no damage shall be done to such road or any part thereof.

Minerals under road to belong to original proprietors of land.

XIX. And be it further enacted, That the word "trustees" in the said recited Acts or any of them, or in this Act, shall be deemed and construed to extend to all or any of the trustees or commissioners appointed for the execution of any Act or Acts for making, amending, repairing, maintaining, or keeping in repair any turnpike road; and the word "person" in the said recited

Explanation of words in Act.

(s) 3 G. 4, c. 126; 4 G. 4. c. 95.

(t) It has already been shewn (p. 209), that, by the common law, the freehold of the road (subject to the Queen's highway), is held to be vested in the owner of the soil, who may carry water under it, maintain actions against trespassers, &c. And although, by the 3 G. 4, c. 126, ss. 86, 88, 89, ante, p. 77, &c., this right is so far from being recognised, that turnpike trustees are authorised, in the event of the road becoming useless, to sell and dispose of it; yet by s. 88 of that Act, as well as by the above section, the mines and minerals under the road are to be reserved to the persons who would have been entitled thereto if the road had continued. And see 4 G. 4, c. 95, s. 75, whereby provision is made for the preservation of the right of pasturage along the sides of turnpike roads.

REPEAL.

Acts or any of them, or in this Act, shall be deemed and construed to extend to and to include any one or more person or persons, and of either sex; and that the word "county" in the said recited Acts or any of them, or in this Act, shall be deemed and construed to extend to and to include riding or division; and that the word "parish" in the said recited Acts or any of them, or in this Act, shall be deemed and construed to extend to and to include ward, district, hamlet, township, or place (u).

Extending
powers of
former Acts.

XX. And be it further enacted, That all the powers, authorities, clauses, provisions, penalties, forfeitures, matters, and things contained in the said Acts of the third and fourth years of the reign of his present Majesty, shall, so far as the same are not altered or varied by this present Act, extend and be construed to extend to this Act, and shall be applied and put in execution, as fully and effectually, to all intents and purposes, as if the same were repeated and re-enacted in the body of this Act, and made part thereof (v).

7 & 8 GEO. IV. CAP. 27, s. 1, (in part).

An Act for repealing various Statutes in England relative to the Benefit of Clergy, and to Larceny and other Offences connected therewith, and to Malicious Injuries to Property, and to Remedies against the Hundred.
[21st June, 1827.]

Repeal of so
much of 3 G.
4, c. 126, s. 128,
ante, p. 120,
as creates
any felony.

WHEREAS it is expedient to repeal various statutes now in force in that part of the United Kingdom called England, relative to the benefit of clergy; and it is also expedient to repeal various statutes relative to larceny, and other offences of stealing, and to burglary, robbery, and threats for the purpose of robbery or of extortion, and to embezzlement, false pretences, and the re-

(u) As to the construction of the word "day," see 9 G. 4, c. 77, s. 16; and as to what shall be construed as the centre of the road, see 3 G. 4, c. 126, s. 124, ante, p. 117.

(v) See also 4 G. 4, c. 95, s. 88; 9 G. 4, c. 77, s. 19, &c.

ceipt of stolen property, in order that the provisions contained in those statutes may be amended and consolidated into one Act; And it is also expedient, with the same view, to repeal various statutes relative to malicious injuries to property; And also, with the same view, to repeal various statutes relative to remedies against the hundred; be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, That—so much of an Act passed in the same year, (3 G. 4) intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," as creates any felony;—and all Acts continuing or perpetuating any of the Acts or parts of Acts hereinbefore referred to, so far only as relates to the continuing or perpetuating the same respectively, shall be and continue in force until and throughout the last day of June in the present year, and shall, from and after that day, as to that part of the United Kingdom called England, and as to offences committed within the jurisdiction of the Admiralty of England, be repealed; except so far as any of the said Acts may repeal the whole or any part of any other Acts; and except as to offences and other matters committed or done before or upon the said last day of June, which shall be dealt with and punished as if this Act had not been passed.

INJURING
BRIDGES.
—

7 & 8 GEO. IV. CAP. 30, SS. 13, 14.

An Act for consolidating and amending the Laws in England relative to Malicious Injuries to Property.

[21st June, 1827.]

XIII. AND be it enacted, That if any person shall unlawfully and maliciously pull down or in anywise destroy any public bridge, or do any injury with intent and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony; and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment.

Injury to a
public
bridge.

Punishment.

DESTROYING
TOLL-GATES,
&c.

Destroying a
turnpike
gate, toll-
house, &c.

XIV. And be it enacted, That if any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act or Acts of Parliament relating thereto, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll: every such offender shall be guilty of a misdemeanor (a), and, being convicted thereof, shall be punished accordingly.

9 GEO. IV. CAP. 77.

An Act to amend the Acts for regulating Turnpike Roads.
[25th July, 1828.]

- 3 G. 4, c. 126. WHEREAS an Act was passed in the third year of the reign of his present Majesty, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England:" and whereas another Act was passed in the fourth
- 4 G. 4, c. 95. year of the reign of his present Majesty, intituled "An Act to explain and amend an Act passed in the third year

Destroying
toll-gates.

(a) These offences were formerly declared felony, and the offender was subjected to death without benefit of clergy. See 8 G. 2, c. 20. That statute was in part repealed by the 7 G. 3, c. 40 (see note on 3 G. 4, c. 126, s. 1), and wholly repealed by 1 G. 4, c. 115. By 3 G. 4, c. 126, s. 128, the offence of maliciously destroying or damaging toll-gates, toll-houses, weighing machines, &c., or of forcibly rescuing such offenders, was declared felony, and punishable with seven years' transportation, or in mitigation to be punished as petit larceny. By 7 & 8 G. 4, c. 27, s. 1, so much of 3 G. 4, c. 126, as creates any felony, is repealed; see ante, p. 247; and the offence is now made a misdemeanor. See Form of Indictment, Appendix, No. 59.

of the reign of his Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England:" and whereas another Act was passed in the seventh and eighth years of the reign of his present Majesty, intituled "An Act to amend the Acts for regulating Turnpike Roads in England:" and whereas the said Acts require to be further amended, and some enactments thereof to be repealed: May it therefore please your Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That so much of the said recited Act of the fourth year of the reign of his present Majesty as enacts that all and every book and books containing the accounts and proceedings of the trustees and commissioners for executing any Act for making or maintaining any turnpike road, or containing any orders or agreements made or entered into by them, such book or books being kept and signed in manner therein mentioned, should and might be given in evidence in all cases of appeal, and in all prosecutions, suits, and actions whatsoever, shall be, and the same is hereby repealed.

ACCOUNTS,
&c.
—

7 & 8 G. 4, c.
24.

So much of
recited Act
of 4 G. 4, c.
95, s. 62, ante,
p. 197, as
enacts, that
books of ac-
counts, &c.,
shall be re-
ceived as
evidence,
repealed.

II. And be it further enacted, That all books kept for registering mortgages or assignments, and all entries therein, and all books containing the accounts and proceedings of the trustees in the execution of any local turnpike Act, kept according to the directions and provisions of any such Act, or of the said recited Act of the third year of the reign of his present Majesty or of this Act, and made evidence thereby (a), shall be admitted in evidence in all courts, and by all judges, justices, and others, without proving the facts therein contained, unless such facts or any of them shall be first controverted, notwithstanding any former Act under the provisions of which such books may have been originally kept may be repealed; and all such books shall be preserved and kept by the clerk for the time being of such trustees, and shall at all seasonable times

Books of ac-
counts and
proceedings
to be receiv-
ed in evi-
dence with-
out proving
their con-
tents, not-
withstanding
the Act un-
der which
they have
been kept is
repealed;
and to be
open to in-
spection.

(a) See 3 G. 4, c. 126, s. 72, ante, p. 60. See further as to evidence, pp. 49, 124, 218, &c.

TOLL-GATES. be open to the inspection of the said trustees, and of any creditor or creditors of the tolls, without fee or reward; and the said trustees and creditors, or any of them, shall and may take copies of or extracts from the said book or books, or any part or parts thereof respectively, without paying anything for the same; and in case the clerk to the said trustees shall refuse to permit, or shall not permit, the said trustees, or such creditors, or any of them, to inspect the said book or books, or to take such copies or extracts as aforesaid, such clerk shall forfeit and pay any sum of money not exceeding five pounds for every such offence (b).

Repeal of 3 G. 4, c. 126, s. 45, ante, p. 37, as to the erection of toll-gates, &c.

III. And be it further enacted, That so much of the said recited Act of the third year of the reign of his present Majesty as directs that no toll-gate shall be erected on the side of any turnpike road, unless the same be ordered by the trustees or commissioners at a public meeting, in manner therein mentioned, shall be and the same is hereby repealed.

Repeal of 7 & 8 G. 4, c. 24, s. 5, ante, p. 234, as to removing toll-gates.

IV. And be it further enacted, That so much of the said recited Act of the seventh and eighth years of the reign of his present Majesty, as directs that it shall be lawful for the trustees of any turnpike road to order and direct any turnpikes, toll-gates, or side-bars to be removed, as therein directed, shall be and the same is hereby repealed.

Power to continue or erect toll-gates.

V. And be it further enacted, That it shall be lawful for the trustees of any turnpike road, and they are hereby authorised and empowered, to continue all and every or any of the toll-gates or toll-houses now standing or being in, upon, or across any such turnpike road, or on the sides thereof, and from time to time at any special meeting to be holden for that purpose, of which meeting public notice, specifying the time and place and the purpose thereof, shall have been given in some newspaper published or circulated in the county or counties through which any such turnpike road passes, and also by affixing a copy of such notice on all the turnpikes, toll-gates, or side-bars, (if any), which shall be then standing on such road, fourteen days previously to such meeting, to order and direct, by some

(b) By 3 G. 4, c. 126, s. 73, a like penalty is imposed for the non-production of books of account. See ante, p. 61, and note thereon.

order in writing, to be signed by three at least of the trustees present at such meeting, that there be erected and built in, upon, or across any such turnpike road, or any part thereof, or upon the sides thereof or any part thereof, when and where they shall judge necessary, such and so many toll-gates, turnpikes, side-bars, and chains, with toll-houses, out-houses, and other conveniences thereto(c), and also to take in and inclose on the sides of such road, or any part thereof, suitable garden spots for each of such toll-houses, not exceeding one-eighth of a statute acre to each toll-house, as the said trustees shall direct or appoint; and also shall and may from time to time at any such meeting, or at any other meeting to be called as aforesaid, and by such order as aforesaid, from time to time order and direct any of such toll-gates, turnpikes, side-bars, and chains to be taken down or discontinued, or to be removed and placed elsewhere upon, across, or on the sides of such road, in such situations as to them the said trustees may appear fit or eligible: Provided that nothing in

GENERAL
POWERS.

(c) This is a more general power than was given by the sections repealed. See Form of Notice of Meeting for ordering the erection or removal of toll-gates, &c., ante, p. 140; and see Form of Order, Appendix, No 58. Where a local Act authorised the trustees to erect turnpikes, with suitable buildings and conveniences, the Court held, that sinking a well was within the scope of their authority, and that a contract made by one of them on behalf of the rest was valid, and that an action on such contract to recover a moiety of the expense was well brought in the name of their clerk. A consent on the part of the trustees to a proposition, that, if the well was sunk on the waste land of the defendant, he would pay half the expense, was held also a sufficient consideration to support the action. *Newman v. Fletcher*, 1 D. & R. 202. And see *Rex v. Cambridgeshire Justices*, 1 D. & R. 325, where the Court refused a mandamus to hear a complaint respecting the erection of a toll-gate, leaving the party to his remedy by indictment or information. The property of toll-gates is vested in the trustees by 3 G. 4, c. 126, s. 60, ante, p. 49. And see the same Act, s. 21, ante, p. 17, and 7 & 8 G. 4, c. 24, s. 6, authorising the trustees to erect weighing-houses, and place lamps at toll-houses.

Erecting and
removing
toll-gates.

GENERAL
POWERS.

this Act contained shall authorise any toll-gate, turnpike, side-bar, or chain to be erected or built in any place or places where it is or may be provided by any local turnpike Act there shall be no turnpike, toll-gate, side-bar, or chain erected, built, or placed (*d*).

So much of 3 G. 4, c. 126, s. 82, ante, p. 71, as relates to the recovery of subscriptions, repealed.

Recovery of subscriptions.

VI. And be it further enacted, That so much of the said recited Act of the third year of the reign of his present Majesty as directs the payment and recovery of any sum or sums of money to be subscribed or agreed to be advanced for the making or maintaining of any turnpike road, shall be and the same is hereby repealed (*e*).

VII. And be it further enacted, That the several and respective persons who shall subscribe for or agree to advance any money for or towards the making or maintaining any turnpike road or roads, or highway intended to be made turnpike, shall and they are hereby required to pay the sum or sums of money so subscribed, within such time or times, and in such parts and proportions as shall be expressed in the writing which shall be subscribed by them or on their behalf, or as the trustees of any such turnpike road shall order and direct (*f*); and

(*d*) If the trustees erect toll-gates contrary to any Act of Parliament, the justices are empowered to remove them. See 3 G. 4, c. 126, s. 46, ante, p. 37.

(*e*) This and the following sections do not repeal the directions of 3 G. 4, c. 126, ss. 82, 148, and Schedule, No. 14, but only the provisions as to the payment and recovery of money: *Meigh v. Clinton*, 11 A. & E. 418.

(*f*) The agreement must be in writing; and if it be not such as the Act requires, an action for calls cannot be maintained, even though the subscriber have acknowledged his liability: *Meigh v. Clinton*, 11 A. & E. 418.

An instrument in the following form, drawn up at a meeting of the trustees, and sent forth for subscription, was held not to warrant them in making calls on a subscriber thereto:—"At a meeting, &c., it was proposed that the necessary application be made without delay, in order to raise funds to meet the expenses referred to, and the gentlemen undernamed have proposed to subscribe such sums &c., which it is proposed to secure by way of mortgage."—*Ib.*

the same shall be demanded by and paid to such person or persons as the said trustees shall by any writing under their hands authorise to receive the same; and if any person or persons shall neglect or refuse to pay the same, or any part thereof, as aforesaid, it shall be lawful for the said trustees to sue for the same in the name of any one of such trustees or of their treasurer or clerk, and to recover the same, together with full costs of suit, in any of his Majesty's courts of record, by action of debt or on the case, by bill, plaint, suit, or information, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed; and all such monies shall be vested in the said trustees, and applied as in the Act for making or maintaining any such turnpike road or roads shall be mentioned (*g*).

VIII. And be it further enacted, That so much of the said recited Act of the third year of the reign of his present Majesty, as authorises the trustees of any turnpike road to make, divert, shorten, vary, alter, and improve any such road, shall be and the same is hereby repealed.

So much of 3 G. 4, c. 126, s. 83, ante, p. 71, as authorises the shortening of roads, repealed.

IX. And be it further enacted, That it shall be lawful for the trustees of any turnpike road, and they are hereby authorised and empowered (subject to the restrictions in the said recited Acts and this Act con-

Trustees may shorten, vary, and alter roads.

(*g*) It has frequently been asserted that the funds of turnpike roads are vested in the trustees for the purpose of repairing the road; and it has been complained of as a defect in the system, that the parish is not therefore exempted from the repair thereof, and that the trustees are not liable to indictment for non-repair. The latter part of the above section shews that this complaint is unfounded. The funds are not vested in the trustees for the purpose of repairing the roads alone, but for such purposes as in the Act for repairing the road are mentioned. These purposes vary; but it is obvious, that the expenses of forming the roads, and other claims, must be satisfied before the repairs can be attended to. If the revenues of the road are sufficient for the purpose, of repairs consistently with the other objects provided for by the local Acts, the trustees are bound to apply the funds to this purpose, but not otherwise.—See note (*r*), p. 241.

Application of trust funds.

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POWERS.

tained) to make (*h*), divert, shorten, vary, alter, and improve the course or path of any of the several and respective roads under their care and management, or of any part or parts thereof; and to divert, shorten, vary, alter, and improve the course or path of any of the said several and respective roads, or any part or parts thereof, upon, in, through, or over any private lands, grounds, or hereditaments, making or tendering satisfaction to the owners thereof and persons interested therein for the same, or for any damage they may sustain thereby (*i*);

Making
roads.

(*h*) This is a more comprehensive enactment of the general powers given to trustees by the section repealed, and is designed to supply any deficiency in the wording of the local Act.

Turnpike roads can only be made such by Act of Parliament, and the power to make the road is usually given, and the particulars of the property to be taken for that purpose set out, in the local Act. In making such road, whether it be by an original formation or by changing a highway into a turnpike road, should there be any conditions or restrictions in the local Act, they must be strictly complied with before either the way can be established, or the liability to repair it be enforced. In the case of *Rex v. Cumberworth*, 3 B. & Ad. 108, the trustees were authorised to make a road from one place to another, and the making of the entire road was held to be a condition precedent to any part of the highway becoming repairable by the public. And see *Rex v. Haslingfield*, 2 M. & Sel. 558; *Rex v. Hepworth*, tried before *Hullock*, B., at the York Assizes, 1829; *Rex v. St. Benedict*, 4 B. & Ald. 447; *Rex v. Mellor*, 1 B. & Ad. 32; *Rex v. Winter*, 8 B. & C. 785; *Rex v. Yorkshire W. R. Justices*, 5 B. & Ad. 1003. As to highways not turnpike, they might heretofore have been created either by custom or prescription, or by Act of Parliament; but the General Highway Act, 5 & 6 W. 4, c. 50, has laid down new regulations for the dedication of roads hereafter to be made.

(*i*) Where trustees were authorised by a Turnpike Act to enter upon and take certain lands, and to pull down certain houses, "making or tendering satisfaction to the owners or proprietors, for any loss, &c.," it was held, first, that compensation must be made not only to the owners of the fee simple in the lands, &c, but also to the lessees; secondly, that the trustees were not

and also upon, in, over, or through any common or waste lands, without making any satisfaction for such common or waste lands, in such manner as they shall think proper; so that any such road shall not exceed sixty feet in width, together with such footpath, causeways; bridges, arches, banks, culverts, ditches, drains, and fences on the line of such road, as they shall think necessary or expedient; and it shall also be lawful for such trustees, and for their surveyors or surveyor and workmen, with or without carts or carriages, from time to time to enter upon the lands and grounds or hereditaments through which or whereupon such road, footpath, causeways, bridges, arches, banks, culverts, ditches, drains, and fences is or are intended to be made or pass, and also upon any adjoining lands or grounds, to stake out the same in such manner as such trustees shall think necessary or expedient, without being deemed a trespasser or trespassers, and without being subject or liable to any fine, penalty, or punishment for entering or continuing upon such lands or premises respectively, for any of the purposes of the Act for making or maintaining any such turnpike road (*k*); and if any person shall pull up, remove, or destroy any stakes (*l*) or

bound to make or tender satisfaction before or at the time of entering upon the lands or pulling down the houses: *Lister v. Lobley*, 7 A. & E. 124; see *Peters v. Clarson*, 7 Man. & G. 548.

See further, as to compensation under road, canal, railway, dock, &c., Acts, the cases cited in Chitty's Statutes, 2nd ed., Vol. ii. p. 530, n. (*b*).

(*k*) For the restrictions under which these powers are to be carried into effect, see 3 G. 4, c. 126, s. 84, &c. Under a clause similar to the above, it has been held, that the trustees are authorised to lower hills and raise hollows, and are not liable to an action for consequential injury resulting from an act which they are authorised to do: *Boulton v. Crowther*, 2 B. & C. 703. In the same case *Littledale, J.*, expressed an opinion, that, even without this special clause, the trustees could not have been deemed trespassers; and see ante, p. 232, as to the liability of trustees.

(*l*) The trustees may maintain trespass for an injury to their

MORTGAGES. other marks used for the purposes aforesaid, every person so offending shall forfeit and pay for every such offence any sum not exceeding five pounds.

Mortgages under former Acts to remain good.

X. And be it further enacted, That where, at the time of the expiration or repeal of any Act for making and maintaining any turnpike road, any monies which may have been borrowed, subscribed, or advanced under the provisions of such Act, shall be due and owing on the credit of the tolls thereby granted, the term and tolls to be granted by all and every subsequent Act and Acts for maintaining such turnpike road shall be and the same are hereby made subject and liable to the payment of the monies which shall so remain due and owing on the credit of such tolls, and of all interest to grow due thereon, as fully and effectually, to all intents and purposes, as if such monies had been borrowed or become due on the credit or security of the tolls to be granted by such subsequent Act or Acts (*m*); and all and every person and persons who may owe or be subject or liable to the payment of any sum or sums of money to the trustees for carrying any such former Act into execution, shall be liable to the payment thereof to the trustees for executing any such subsequent Act or Acts, and such monies shall be applied by them for the purposes of such subsequent Act or Acts (*n*).

Bonds, contracts, &c., to remain in

XI. And be it further enacted, That all conveyances, bonds, covenants, agreements, contracts (*o*), and

stakes, but not trespass quare clausum fregit: *Driver v. Simpson*, 8 Taunt. 614.

(*m*) For other provisions respecting mortgages, see 3 G. 4, c. 126, ss. 47—49, ante, pp. 38, 39, and the cases there cited; and for the form of mortgage by trustees, see 3 G. 4, c. 126, s. 81, ante, p. 68.

(*n*) See note on p. 254. As to the recovery of money by action, see 3 G. 4, c. 126, s. 74, ante, p. 62, &c.

(*o*) See 3 G. 4, c. 126, s. 57, ante, p. 48, declaring all contracts for letting tolls valid, if signed by the trustees or their clerk or treasurer, &c., and see the cases there cited.

securities, made or entered into by any person or persons to or with the trustees for carrying any local turnpike Act into execution, or by any other person or persons on behalf of the said trustees, according to the provisions of any such Act, shall remain in full force and effect, notwithstanding the expiration or repeal of such Act, and shall be and continue available in all courts, and before all judges and justices having jurisdiction, as the case may require, until the same are fully satisfied and performed, on account and for the benefit of the trust to be created by any subsequent Act for maintaining the same turnpike road, or any part thereof.

MORTGAGES.

full force, notwithstanding the repeal of any Act.

XII. And be it further enacted, That the trustees appointed by virtue of any local turnpike Act may receive in and cancel all or any of the mortgages granted under the trusts of any former Act for the same turnpike road, or any part thereof, and, instead and in lieu thereof, give and execute another mortgage or other mortgages, at the expense of the parties requiring the same.

Trustees may cancel mortgages under former Acts, and execute others.

XIII. And be it further enacted, That in all cases where it shall appear by the books kept by the clerk or treasurer to the trustees of any turnpike road, or by any satisfactory evidence adduced at any meeting of such trustees, that any person or persons is or are a creditor or creditors on security of the tolls authorised by any local turnpike Act to be taken, and that the mortgage or assignment of the tolls for securing any such sum or sums of money has been lost, mislaid, or by accident destroyed, it shall and may be lawful for the said trustees, or any three or more of them, to execute, at the expense of the person or persons applying for the same, an assignment of the tolls by any such local turnpike Act granted, for the sum or sums of money mentioned in such original assignment or transfer; and every assignment to be executed shall be valid and effectual for the purposes thereby intended.

Trustees may renew mortgages, &c., lost or mislaid.

XIV. And be it further enacted, That all persons who may be or shall have been employed, or who shall

Persons employed under former Acts,

OFFICERS.
to deliver up
books, &c.

have received any tolls or other money on account of or for the purposes of any Act for making or maintaining any turnpike road which may have expired or been repealed, or who may have or shall have had in their custody or possession any money, books, papers, writings, or other things relating to any such turnpike road, shall account for and pay and deliver over the same, and every part thereof, to the trustees for executing any subsequent Act for maintaining such turnpike road, in like manner and under the like penalties as the several collectors and other persons receiving any money by virtue of the said recited Acts of the third and fourth years of the reign of his present Majesty, and of any local turnpike Act, are by the said recited Acts of the third and fourth years of the reign of his present Majesty required to pay or account for the same *(p)*.

Officers to
hold their
offices after
any Act is
repealed,
unless re-
moved by
trustees.

XV. And be it further enacted, That the treasurer, if appointed consistently with the provisions of the said recited Acts of the third, fourth, and seventh and eighth years of the reign of his present Majesty *(q)*, and each and every clerk, receiver, collector, surveyor, and other officer, appointed under or employed in the execution of any Act for making or maintaining any turnpike road, which may have expired or been repealed, shall hold and enjoy such their several and respective offices and employments until removed therefrom respectively by the trustees for executing any subsequent Act for maintaining the same turnpike road; and each and every such treasurer, clerk, receiver, collector, surveyor, and other officer, shall have the like powers and authorities for the purpose of any such subsequent Act, and shall be subject and liable to the like pains and penalties, and to the like powers of removal, and to the like rules and regulations in all respects whatsoever, as if he or

(p) See 4 G. 4, c. 95, s. 47, ante, p. 187.

(q) See 4 G. 4, c. 95, s. 43, ante, p. 183; 3 G. 4, c. 126, ss. 71, 76, ante, pp. 60, 63; 7 & 8 G. 4, c. 24, s. 4, ante, p. 232; and see further as to the duties and liabilities of officers, the sections referred to and notes thereon.

they had been appointed under or by virtue of such subsequent Act. TOLLS.

XVI. And be it further enacted, That it shall and may be lawful for the trustees of any turnpike road, or any person appointed or continued to be appointed collector of the tolls to be taken by virtue of any local turnpike Act, to demand and take (*r*) every day (such day, for the purposes of all local turnpike Acts, being computed from twelve of the clock at night to twelve of the clock of the next succeeding night (*s*), the several and respective tolls to be mentioned in any such Act, at the several and respective toll-gates and turnpikes, or side-bars and chains, which are or shall be continued or erected by virtue of this Act; or of any local turnpike Act, in, upon, across, or on the sides of any turnpike road, or any part or parts thereof (*t*); and Tolls to be collected.

(*r*) The notice board put up at the gate, stating the toll payable, may probably be a sufficient demand. But if the party passing through misrepresent facts, leading the collector to believe that he is not entitled to toll, and he consequently makes no demand of toll, that will be a dispensation of a demand: *Maurice v. Marsden*, 19 L. J., C. P., 153. The word "take" denotes no more than "receive," without any notion of force or compulsion: *Stamp v. Sweetland*, 8 Q. B. 21.

(*s*) See 3 G. 4, c. 126, s. 29, allowing post-horses in certain cases to repass for nine hours after midnight without paying a second toll; and see the cases cited in p. 22, and collected in the Appendix, as to the construction of local Acts allowing carriages and horses to pass more than once on the same day without payment of a second toll.

(*t*) The chief distinction between a parish highway and a turnpike road is the imposition of a toll upon the latter, to be applied to its maintenance. Without this there would be no necessity for keeping up the separate establishments created by the turnpike laws, and all the highways in the kingdom might be made subject to the same regulations. The imposition of toll is said to be the revival of an old principle, with some difference in its adaptation to practice. Under the ancient system of tenures, the lord of the soil frequently claimed the privilege of receiving tolls from all who travelled along his highway; nor was this es- Tolls.

TOLLS.

which tolls or sums of money shall be demanded and taken as aforesaid, before any horses, cattle, or carriage whatsoever shall be permitted to pass through any toll-gate or turnpike, or side-bar or chain; and the tolls or sums of money to be levied and collected by virtue of any local turnpike Act shall be and the same are hereby vested in the trustees of such Act for the purposes thereof, in manner to be thereby directed (u).

teemed a mere bounty, for he was liable, in consideration of such toll, to keep the way in good order; and in some countries, even to defend the passengers from depredation. There was an instance in France, where the lord was fined for permitting a merchant to be robbed upon his highway: *Wellbeloved on Highways*. The amount of toll payable at the different turnpike gates is regulated by the local Acts, but is subject to the restrictions and modifications of these general laws, which, in this respect, are extended to the local Act, 3 G. 4, c. 126, s. 4; 4 G. 4, c. 95, s. 88; and 9 G. 4, c. 77, s. 19, &c. In the construction of Acts of this nature, so far as the imposition and amount of toll is concerned, it is a general rule that those who seek to exact tolls through the medium of the legislature, can only be entitled to them when the statutes granting them are couched in plain and unequivocal language; and the Court will look to the strict words, and construe them according to their plain meaning, with reference to the subject matter. Public companies can impose no burthen except that which is clearly given by the Acts; and any ambiguity in the terms expressed in the statute must operate against the adventurers and in favour of the public: *Stourbridge Canal Company v. Wheeley*, 2 B. & Ad. 792. But where the tolls are imposed in language to which a plain and definite meaning can be attached, they are clearly recoverable; and the imposition is not affected by an exempting clause of an ambiguous character: *Hopkins v. Thorogood*, 2 B. & Ad. 916; *Rowe v. Shilson*, 4 B. & Ad. 726; 1 Nev. & M. 734. See *Ramsden v. Gibbs*, 1 B. & C. 324; *Bussey v. Storey*, 4 B. & Ad. 109; *Barrett v. Stockton and Darlington Railway Co.*, 2 M. & Gr. 134; 3 M. & Gr. 956. For the different regulations respecting the imposition, letting, collection, reduction of and exemption from toll, see the Index, post.

(u) See note on p. 254.

XVII. And be it further enacted, That, if any person or persons shall claim or take the benefit of any of the exemptions(*v*) mentioned in any local turnpike Act, not being entitled to the same, every such person shall, for every such offence, forfeit any sum not exceeding five pounds; and in all cases the proof of exemption shall be upon the person claiming the same.

ACTIONS, &c.
Penalty for claiming exemptions, not being entitled thereto.

XVIII. And be it further enacted, That no person or persons shall or may be convicted of any offence or offences contrary to the provisions of this Act, or of the said recited Acts, or of any local turnpike Act, in a summary way, before any justice or justices of the peace, after the expiration of six months from the time when any such offence or offences shall or may have been committed(*x*).

Actions to be brought within six months.

XIX. And be it further enacted, That all the powers, authorities, clauses, provisions, penalties, matters, and things contained in the said Acts of the third, fourth, and seventh and eighth years of the reign of his present Majesty (save and except such parts thereof respectively as are varied, altered, or repealed), shall extend and be construed to extend to this Act; and all the powers, authorities, clauses, penalties, forfeitures, matters, and things contained in the said said Acts of the third, fourth, and seventh and eighth years of the reign of his present Majesty (except such parts thereof respectively as are varied, altered, or repealed), and all the powers, authorities, clauses, provisions, penalties, matters, and things contained in this Act shall extend and be construed to extend to every local turnpike Act, and shall be applied and put in execution as fully and effectually, to all intents and purposes, as if the same were repeated and re-enacted in the body of such local turnpike Act, and were made part thereof; and that the said recited Acts and this Act shall not be recited in any such local turnpike

Power of former Acts extended to this Act.

Powers of this Act to extend to all local turnpike Acts.

Acts not to be recited unless for the

(*v*) See also 3 G. 4, c. 126, ss. 36, 41, 139, ante, pp. 30, 33, 127; and see Form of Conviction, Appendix, No. 63.

(*x*) By 3 G. 4, c. 126, s. 143, the time for commencing proceedings was limited to *three* calendar months. See ante, p. 130.

SAVING
CLAUSES.

purpose of
being alter-
ed.

This Act not
to extend to
the Commer-
cial Road (9
G. 4, c. cxii.),
or the road
from Glas-
gow to Car-
lisle, (56 G. 3,
c. lxxxiii.),
&c.

Act, save and except as to such powers, authorities, clauses, provisions, penalties, matters, and things as shall be expressly referred to for the purpose of being varied, altered, or repealed by any such local turnpike Act(y).

XX. Provided always, and be it further enacted, That nothing in this Act or in the said recited Acts contained shall extend, or be construed, adjudged, deemed, or taken to extend, to the turnpike road called the Commercial Road, or the several branches leading from and out of the same, authorised to be made, repaired, and maintained under and by virtue of an Act passed in this session of parliament, intituled "An Act for more effectually repairing and improving the several Roads called the Cannon-street Roads, the Commercial Road, the Horseferry Branch of Road, the East India Dock Road, the Barking Road, and the Shadwell and Mile End Branch of Road, in the Counties of Middlesex and Essex; and for laying down a Stoneway on the said Commercial, East India Dock, and Barking Roads;" or to affect, encroach upon, vary, alter, or interfere with any of the tolls, weights, or duties created by virtue of such Act, or any of the powers and authorities given to or vested in the trustees acting under or by virtue of such Act; nor shall extend, or be deemed, construed, or taken to extend, to an Act passed in the fifty-sixth year of the reign of his said late Majesty, intituled "An Act for improving the Road from the City of Glasgow to the City of Carlisle," or to three several Acts amending the same, passed in the fifty-eighth and fifty-ninth years of the reign of his said late Majesty, and in the first and second years of the reign of his present Majesty.

(y) The effect of these general enactments is to consolidate all the general laws, and to extend them to all local Acts, unless when otherwise expressly provided for. See 3 G. 4, c. 126, s. 4, and note thereon. See also 4 G. 4, c. 95, s. 88.

1 & 2 WILL. IV. CAP. 25.

An Act to amend the Acts for regulating Turnpike Roads in England, so far as they relate to certain Exemptions from Toll. [22nd September, 1831.]

WHEREAS doubts are entertained whether, under the provisions of an Act passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," and of several other Acts amending the same, cattle going to or from water or pasture, and passing on such turnpike roads, or from being shoed or farried, are exempted from tolls; for the removal therefore of such doubts, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That no toll shall be demanded or taken for or in respect of any horse, ass, sheep, swine, or other beast or cattle of any kind going to or from water or pasture, or to or from being shoed or farried, and passing on any turnpike road, provided that such horse, ass, sheep, swine, or other beast or cattle of any kind do not pass upon such turnpike road more than the space of two miles, going to or returning from water or pasture, or to or from being shoed or farried.

Cattle going a certain distance along a turnpike road to pasture, &c., shall be exempt from toll.

II. And be it further enacted, That no toll shall be demanded or taken on any turnpike road for any horse or other beast of draught, or for any waggon, wain, cart, or other carriage, when employed or going to be or returning from having been employed in the performance of statute labour on any road (a); anything contained in any Act for regulating turnpike roads to the contrary notwithstanding.

Toll not to be taken for any horse, cart, &c., employed in the performance of statute labour.

(a) See 3 G. 4, c. 126, s. 32, ante, p. 24, exempting horses and carriages employed in conveying materials for repairing roads, &c.

EXEMPTIONS.

Act not to
prejudice
former Acts.

III. And be it further enacted, That all and every the powers, provisions, authorities, penalties, and forfeitures contained in the said recited Act, and in the several other Acts for regulating turnpike roads in England (save and except such parts thereof as are varied, altered, or repealed), shall be as good, valid, and effectual for carrying this Act into execution as if the same had been repeated and re-enacted in the body of this Act, and that the said recited Act and this Act shall be construed together as one Act.

Act not to
extend to
gates near
London.

IV. And be it further enacted, That the provisions of this Act shall not be applicable to any turnpike gate or bar, or to any cattle passing through the same, unless the said gate or bar shall be situate more than six miles from London Bridge.

2 & 3 WILL. IV. CAP. 124.

An Act to explain certain Provisions in Local Acts of Parliament relating to Double Toll on Turnpike Roads.

[16th August, 1832.]

WHEREAS divers local Acts now in force for making, repairing, and improving turnpike roads in that part of Great Britain called England, authorise tolls to be collected and taken at certain toll-gates and turnpike gates erected upon or on the sides of such turnpike roads, for or in respect of waggons, carts, and carriages, or the horse or horses or other beast or beasts drawing the same, passing through the said toll-gates and turnpike gates: and whereas many of the said Acts authorise double toll to be taken at such toll-gates or turnpike gates at particular periods of the year, for or in respect of waggons, carts, or carriages, laden with several heavy goods and articles therein respectively specified, or for or in respect of the horse or horses or other beast or beasts drawing the same, passing through the said gates: and whereas doubts have arisen as to the construction of the said provisions relative to double toll; and in

many cases treble tolls have been demanded and taken for carriages and horses, liable in the first instance to single toll only, passing through the said gates, but which have afterwards repassed on the same day laden with such articles as rendered them liable to double toll, in which case double toll has been demanded and paid on such repassing: Be it therefore enacted and declared by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That in every case in which by virtue or under the authority of any local Act now or hereafter to be made, for making, repairing, or improving any turnpike road in that part of Great Britain called England, double toll as aforesaid shall be imposed on any waggon, cart, or other carriage, or any horse or horses or other beast or beasts drawing the same, which at the time of first passing through any turnpike gate or toll-gate shall have been liable to and shall have paid single toll only, shall, on repassing through the same turnpike gate, or toll-gate on the same day (a), before twelve of the o'clock at night, so laden as to be subject to double toll, be liable to pay one other single toll only and no more, making, together with the toll first paid, two single tolls in the whole; any thing in any local Act or Acts to the contrary in anywise notwithstanding.

DOUBLE
TOLLS, &c.

Waggons, carts, &c., having passed through a turnpike gate and paid single toll thereat, upon returning so laden as to be subject to double toll, shall be liable to pay only one more single toll.

II. Provided also, and be it further enacted, That henceforth, notwithstanding any provision to the contrary, any waggon (b) on which a penalty for overweight has been levied shall, on receipt of a ticket to that effect, be exempted from any further penalty for overweight on that day and on the same trust, provided there be no alteration of the loading of such waggon (c).

Provision respecting penalty for overweight.

(a) See 3 G. 4, c. 126, s. 29, ante, p. 21; 9 G. 4, c. 77, s. 16, ante, p. 259, and notes thereon.

(b) It will be observed that the usual words, "cart or wain, or other carriage," are not inserted in this section.

(c) See ante, p. 13.

ACCOUNTS

3 & 4 WILL. IV. CAP. 80.

An Act requiring the Annual Statements of Trustees or Commissioners of Turnpike Roads to be transmitted to the Secretary of State, and afterwards laid before Parliament (a). [28th August, 1833.]

3 G. 4, c. 126,
ss. 69, 78, 79.

WHEREAS an Act was passed in the third year of the reign of his late Majesty, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," by which it was enacted, that all trustees and commissioners of every turnpike road or roads should hold a general meeting of the trust for which they should respectively act on a day to be appointed in the months of April, September, or October in every year, which said meeting should be called or known as "The General Annual Meeting of the Trustees or Commissioners;" and at such meeting the trustees or commissioners assembled should elect a chairman for the

Accounts.

(a) This important Act was founded upon the Report of a committee of the House of Lords, made in 1833, and the object of the accounts required by it was evidently to enable Parliament to decide upon the practicability and propriety of following up the further recommendation of the committee, by consolidating the different trusts and establishing a system of general control. It had often been matter of surprise that the trustees of the extensive revenues annually raised for the use of turnpike roads should not have been required to render some public annual or other account of their expenditure, &c.; especially as the trustees of turnpike roads are such entirely for the benefit of the public, and derive no personal advantage from the trust funds. If money is lent on the credit of the tolls, the subscriber or mortgagee, whether a trustee or stranger, is only entitled to receive back the amount, together with interest at a stipulated rate. In these respects turnpike trusts are superior to trading and speculative companies, and under a judicious system of control might be rendered more extensively useful. See the Report referred to, and extracts from the evidence, in the Appendix.

purposes thereof, and should also audit the several accounts of the said trusts, and report the state of the roads under their care and superintendence, and, as soon as such accounts should be allowed and signed, the clerk to the trustees or commissioners holding such meeting should forthwith make out a statement of the debts, revenues, and expenditure received or incurred on account of the trust for which the meeting should be held, in the form contained in the Schedule annexed to the said Act; which said statement should be submitted to the trustees or commissioners assembled at such meeting, and when approved by the majority of them should be signed by the chairman of the said meeting, and should within thirty days thereafter be transmitted to the clerk of the peace of the county in which the road or the major part thereof to which the said statement related should lie; and it was further enacted, that on such statement being received by the said clerk of the peace he should produce the same to the justices assembled at the quarter sessions to be held next after the receipt thereof, and that such statement should also be registered and kept amongst the records of the quarter sessions of the county for which such clerk of the peace should act: And whereas another Act was passed in the fourth year of the reign of his said late Majesty, intituled "An Act to explain and amend an Act passed in the third year of the reign of his present Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," by which it was enacted, that, where by any Act of Parliament a general annual meeting of the trustees acting in execution of such Act should be appointed to be held at any other time of the year than in the said months of April, September, or October, and the said trustees should have held such meetings under the authority of such Act, it should be lawful for such trustees to continue to hold the said general annual meetings at the time mentioned and directed in the Act by virtue of which they should be appointed, instead of in the said months of April, September, or October, any thing in the said first-recited Act contained to the

4 G. 4, c. 95,
s. 42.

ACCOUNTS.

Clerks of trustees to transmit copies of all past annual statements of debts, &c., under 3 G. 4, c. 126, to the Secretary of State within thirty days from the passing hereof; and in future transmit them within thirty days after they have been signed.

General annual meeting to be held on or before the 25th March.

contrary notwithstanding: And whereas it is expedient that such annual statements should be transmitted to one of his Majesty's principal secretaries of state for the purpose of being revised, and afterwards laid before both houses of Parliament; and for the sake of one uniform system it is also expedient that provisions should be made in respect to the time for holding such general annual meetings: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That the several and respective clerks to the said trustees or commissioners holding such annual meetings respectively as aforesaid shall, within thirty days from the passing of this Act, transmit to one of his Majesty's principal secretaries of state for the time being, copies of all such annual statements so already sent by them respectively to the clerks of the peace as aforesaid, and shall also transmit to one of his Majesty's principal secretaries of state for the time being, copies of all such general annual statements for any future year or years so directed to be transmitted to the clerks of the peace as aforesaid, within thirty days after the same shall have been so approved and signed as aforesaid; and if any such clerk to the said trustees or commissioners shall refuse or neglect to transmit such copies of such annual statements within the time hereinbefore prescribed for that purpose, then and in every such case every such clerk so offending shall for every such offence forfeit any sum not exceeding ten pounds nor less than five pounds, at the discretion of any justice or justices of the peace before whom complaint of such offence shall be made.

II. And be it further enacted, That, from and after the expiration of the present year, the trustees and commissioners of every turnpike road shall hold their general annual meeting on or before the twenty-fifth day of March in every future year, and not at any other time; any thing in the said recited Acts, or in either of them, to the contrary notwithstanding (b).

(b) 3 G. 4, c. 126, s. 69; 4 G. 4, c. 95, s. 42.

III. And be it further enacted, That the annual statement of the debts, revenues, and expenditure of every turnpike trust so as aforesaid required by the said recited Act of the third year of the reign of his said late Majesty (c) and also by this Act, to be made out by the clerk and surveyor to the trustees or commissioners holding such general annual meeting, and submitted to the trustees or commissioners then assembled, shall, for the year one thousand eight hundred and thirty-four, be made out from the date of the last annual statement of the year one thousand eight hundred and thirty-three, until the thirty-first day of December, one thousand eight hundred and thirty-three, according to the form contained in Schedule (A) annexed to this Act; and that in all future years such annual statements shall be made out of the debts, revenues, and expenditures received or incurred on account of the trust for which the meeting shall be held between the first day of January and the thirty-first day of December of the year preceding the year in which such meeting shall be so held, and according to such Schedule.

ACCOUNTS.

Regulating the time for making out the annual statement of debts, &c.

IV. And be it further enacted, That the several and respective clerks to the said trustees or commissioners shall cause to be prepared and laid before such general annual meetings of the trustees and commissioners respectively, estimates made out in the form contained in the Schedule (B) to this Act annexed, of the probable expenditure of their respective trusts for the current year, from the first day of January preceding such meeting to the thirty-first day of December following; and if any such clerk shall refuse or neglect to prepare and lay before such general annual meeting such estimate as aforesaid, every such clerk so offending shall for every such offence forfeit any sum not exceeding ten pounds nor less than five pounds, at the discretion of any justice or justices of the peace before whom complaint of such offence shall be made.

Clerks to prepare estimates for annual meetings.

V. And be it further enacted, That such secretary of

Secretary of

ACCOUNTS.

State to
cause ab-
stracts of an-
nual state-
ments to be
laid before
Parliament;

state for the time being shall yearly and every year cause such annual statements so transmitted to him to be revised and abstracted, and shall cause such abstracts to be laid before both houses of Parliament, together with any observations he may think proper, with respect to the state, condition, and repair of the roads or any of them, or with respect to the debts, revenues, expenditure, and management of any of such turnpike trusts.

And for that
purpose to
summon any
clerks, sur-
veyors, &c,
before him,
and inquire
into the state
of the roads,
and the me-
thod of
maintaining
them.

VI. And be it further enacted, That, to enable such secretary of state for the time being to elucidate such annual statements, and to make such abstract, and prepare such report and observations for both Houses of Parliament, it shall be lawful for such secretary of state for the time being to inquire into the state of the several turnpike trusts whose annual statements shall be so as aforesaid transmitted, and ascertain the amount of the annual income and expenditure of such several trusts, and also to inquire into the method in which the roads under the charge of such trusts are maintained and repaired; and for the purposes aforesaid it shall be lawful for such secretary of state for the time being to summon before him any surveyors, treasurers, clerks, or other officers employed by the trustees or commissioners in respect of the said roads; and the said surveyors, treasurers, clerks, and other officers shall, if required, produce all books of account, plans, maps, papers, documents, and writings in their possession respectively, and shall permit any person appointed by such secretary of state for the time being to inspect, examine, and take copies or extracts from the same, or any or either of them; and if any such surveyor, treasurer, clerk, or other officer shall refuse or neglect to attend any such summons, or refuse or neglect to give a full and satisfactory answer to any question which he shall be by such secretary of state for the time being required to answer, or shall refuse or neglect to produce any book of account, plan, map, paper, document, or writing in his possession, relating to the road as to which he shall be employed, every person so offending shall for every such offence forfeit any sum not

exceeding twenty pounds nor less than five pounds, at the discretion of any justice or justices of the peace before whom complaint of such offence shall be made.

ACCOUNTS.
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VII. And be it enacted, That, when and so soon as the trustees of any turnpike road shall have entered into a resolution to apply to Parliament for the continuation of the term and powers of the Act under which such turnpike road is regulated, or for the alteration or enlargement of any of those powers, or for an increase of the tolls to be levied on such turnpike road, the clerk of the said trustees is hereby required immediately to transmit a copy of such resolution to one of his Majesty's principal secretaries of state for the time being, together with a copy of any special clauses which the trustees may wish to be inserted in any new Act respecting such turnpike road, and also a statement of the increased tolls intended to be levied thereon.

Clerks to trustees to send copies of resolutions of trustees as to continuation or alteration of turnpike Acts, &c., to Secretary of State.

VIII. And be it enacted, That the penalties hereby imposed shall be recovered and applied in the same manner as penalties imposed by the said recited Act of the third year of his late Majesty; and the several clauses and provisions therein contained respecting the recovery and application of penalties shall be in force for that purpose, as if the same were herein specially re-enacted and contained.

Penalties how to be recovered.

SCHEDULES

TO WHICH THIS ACT REFERS.

SCHEDULE (A).

GENERAL STATEMENT OF THE INCOME AND EXPENDITURE OF THE ———
TURNPIKE TRUST IN THE COUNTY OF ———, BETWEEN THE 1ST DAY
OF JANUARY, ———, AND THE 31ST DAY OF DECEMBER, ———.

INCOME.		EXPENDITURE.	
	£ s. d.		£ s. d.
Balance in treasurer's hands brought forward }		Balance due to the trea- surer brought forward }	
Revenue received from tolls . . . }		Manual labour . . }	
Parish composition in lieu of statute duty . }		Team labour and car- riage materials . }	
Estimated value of sta- tute duty performed . }		Materials for surface re- pairs . . . }	
Revenue from fines .		Land purchased . . }	
——— from incidental receipt . . . }		Damage done in obtain- ing materials . . }	
Amount of money bor- rowed on the security of the tolls . . }		Tradesmen's bills . . }	
		Salaries: Treasurer . . }	
		Clerk . . }	
		Surveyor . . }	
		Law charges . . . }	
		Interest of debt . . }	
		Improvements . . }	
		Debts paid off . . }	
		Incidental expenses . . }	
		Statute duty performed, estimated value . . }	
Balance due to the trust		Balance due to treasurer	

SCHEDULE (A.)—continued.

Bonded or mortgage debt . . . Floating ditto . . . Unpaid interest . . . Balance due to the treasurer . . .	per Cent.	ARREARS OF INCOME	Insert the Name and Place of abode of the Treasurer, Clerk, General and Superintending Surveyor below.
Arrears of Toll for current year .		Arrears of parish composition ditto	
Arrears of all other receipts ditto .		Arrears of former years	
		Total arrears	

SCHEDULE (B.)

AN ESTIMATE OF THE EXPENSE OF MAINTAINING THE ——— TURNPIKE TRUST IN THE COUNTY OF ———, BETWEEN THE 1ST DAY OF JANUARY, ———, AND THE 31ST DAY OF DECEMBER, ———.

	£ s. d.
Manual labour	
Team labour and carriage	
Materials delivered on the road, exclusive of carriage	
Land purchased	
Damage done in obtaining materials	
Tradesmen's bills	
Salaries	
Law charges	
Interest of debt	
Watering the roads	
Lighting ditto	
Incidental expenses	

Date of the existing Act of Parliament, ———.

The length of the trust, ——— miles. *Distinguishing main from branch roads.*

State the description and quantity of materials used on the trust, with the price per yard or ton; and if the damages in obtaining materials are paid for at per yard or ton, state the price.

SPRING
CARRIAGES.

4 & 5 WILL. IV. CAP. 81.

An Act to amend an Act of the Third Year of King George the Fourth, for regulating Turnpike Roads in England, so far as the same relates to the Weights to be carried upon Waggon with Springs.

[15th August, 1834.]

3 G. 4, c. 126,
s. 12.

Sect. 13.

Sect. 13 of
recited Act
not to extend
to waggons,
wains, &c.,
having fellies
of wheels of
not less than
4½ inches in
breadth.

WHEREAS, by an Act passed in the third year of the reign of King George the Fourth, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," it is amongst other things enacted, that, for regulating the weights to be allowed to waggons, wains, carts, and other carriages, the weights therein particularly specified and regulated according to the width and number of the wheels of such carriages shall be allowed to every waggon, wain, cart, or other such carriage; and it is also by the said Act enacted, that to every caravan or other four-wheeled carriage used for the conveyance of goods, and built and constructed with springs, shall be allowed the weights following: (that is to say), for every such carriage three tons and fifteen hundred weight in winter, and four tons five hundred weight in summer: and whereas doubts have arisen whether the said last-recited provision extends to waggons, wains, and other such wheeled carriages, when built and constructed with springs, although such waggons, wains, and other four-wheeled carriages, if not on springs, would be comprehended within the said first-recited provision: Be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That the said last-recited provision shall not be deemed or construed to extend to waggons, wains, or other four-wheeled carriages having the fellies of the wheels thereof of the breadth of not less than four inches and a half at the bottom or soles thereof, not-

withstanding the same may be built and constructed with springs; any thing in the said recited Act or any other Act to the contrary notwithstanding (a). EXEMPTIONS.
—

5 & 6 WILL. IV. CAP. 18.

An Act to exempt Carriages carrying Manure from Toll.
[30th July, 1835.]

WHEREAS disputes have arisen as to the exemption from toll for horses and carriages when employed in carrying or conveying manure for improving lands: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of January, one thousand eight hundred and thirty-six, no toll shall be demanded or taken on any turnpike road for or in respect of any horse, beast, cattle, or carriage, when employed in carrying or conveying only dung, soil, compost, or manure for land (save and except lime), and the necessary implements used for filling the manure, and the cloth that may have been used in covering any hay, clover, or straw, which may have been conveyed (b).

After 1st of January, 1836, no toll to be taken for manure, save and except lime.

II. Provided always, and be it enacted, That nothing herein contained shall extend or be construed to ex- Nothing herein to exempt from

(a) See further, as to the wheels of carriages and the weights to be allowed, 3 G. 4, c. 126, s. 7, &c.; 4 G. 4, c. 95, s. 2, &c.

(b) See also 3 G. 4, c. 126, ss. 26, 27, 28, 32; 4 G. 4, c. 16, s. 1; 4 G. 4, c. 95, s. 23; 3 & 4 Vict. c. 51.—Uncrushed bones, which were taken through a turnpike to a farm, to be there crushed, and part of them to be there used as manure, and the residue to be afterwards sold, were held to be exempt from toll under this section, and 3 G. 4, c. 126, s. 32: *Pratt v. Brown*, 8 Car. & P. 244.

REPEAL.
—
toll imposed
by any local
Act.

tend, so as to exempt any waggon, cart, or other carriage laden with dung or manure for manuring land, or any horse or other beast drawing the same, from any toll imposed in respect thereof by virtue of any local Act or Acts now passed, whereby such toll has been imposed for the maintenance of the roads therein respectively mentioned.

Power to vacate leases.

III. And whereas there are many persons who are now contractors for turnpike tolls, and whose leases or contracts will not expire until after the said first day of January, one thousand eight hundred and thirty-six, but who, by reason of this Act, may be desirous of terminating their said leases or contracts; be it therefore enacted, That it may be lawful for any lessee or contractor for tolls, whose lease or contract shall not expire until after the said first day of January, one thousand eight hundred and thirty-six, at any time within twenty-one days after the passing of this Act, to give notice to the clerk or treasurer of such turnpike road, of his or her intention to vacate such lease or contract on the said first day of January, one thousand eight hundred and thirty-six, upon which day such lease or contract shall expire accordingly.

Act not to extend to Scotland or Ireland.

IV. And be it further enacted, That nothing in this Act contained shall extend to Scotland or Ireland.

5 & 6 WILL. IV. CAP. 50,
Ss. 1, 2, 94—96, 98, 99, 113, 119.

An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England.
[31st August, 1835.]

Repeal of 6
G. 1, c. 6, in
part, except
as to London.

18 G 2, c.
33, except as
to London;

WHEREAS it is expedient to amend the laws relating to highways in that part of Great Britain called England, and to consolidate the same in one Act, and to make other provisions respecting highways: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That so much of an Act passed in the sixth year of the reign of King George the First, intituled "An Act for preventing the Carriage of excessive Loads of Meal, Malt, Bricks, and Coals, within Ten Miles of the Cities of London and Westminster," as relates to the carriage of bricks, except so far as the same relates to the city of London; and also an Act passed in the eighteenth year of the reign of King George the Second, intituled "An Act to repeal a clause made in the third year of the reign of King William and Queen

Mary, relating to Carts used by Persons inhabiting within the Limits of the Weekly Bills of Mortality, and to allow such Carts to be drawn with three Horses, and to prevent the Misbehaviour of the Drivers of Carts in Streets within the said Limits," except so far as the same relates to the city of London; and also so much of an Act passed in the twenty-fourth year of the reign of King George the Second, intituled "An Act for the more effectual Preservation of the Turnpike Roads in that part of Great Britain called England, and for the Disposition of Penalties given by Acts of Parliament relating to the Highways in that part of Great Britain called England, and for enforcing the Recovery thereof; and for the more effectual Preventing the Mischiefs occasioned by the Drivers riding upon Carts, Drays, Carrs, and Waggon in the City of London, and within Ten Miles thereof," as relates to the preventing mischief occasioned by the drivers riding upon carts, drays, carrs, and waggons in the city of London, or within ten miles thereof, except so far as the same relates to the city of London; and also an Act passed in the thirtieth year of the reign of King George the Second, intituled "An Act to explain and amend an Act made in the eighteenth year of his present Majesty's reign, to prevent the Misbehaviour of the Drivers of Carts in the Streets in London, Westminster, and the Limits of the Weekly Bills of Mortality, and for other Purposes in this Act mentioned," except so far as the same relates to the city of London; and also an Act passed in the thirteenth year of the reign of King George the Third, intituled "An Act to explain, amend, and reduce into one Act of Parliament the Statutes now in being for the Amendment and Preservation of the Public Highways within that part of Great Britain called England, and for other Purposes;" and also an Act passed in the thirty-fourth year of the reign of King George the Third, intituled "An Act for the more effectually repairing of such parts of the Highways of this Kingdom, as are to be repaired by two Parishes;" and also an Act passed in the same thirty-fourth year of the reign of George the Third, intituled "An Act for varying some of the Provisions in an Act of the thirteenth year of his present Majesty's reign, respecting the public Highways within that part of Great Britain called England, which relate to the Performance of Statute Duty;" and also so much of an Act passed in the forty-second year of the reign King George the Third, intituled "An Act for amending the Laws relating to the Militia in England, and for augmenting the Militia," as relates to the exemption of any serjeant, corporal, drummer, or private of the militia from performing highway duty, commonly called statute duty; and also an Act passed in the forty-fourth year of the reign of King George the Third, intituled "An Act to alter and amend so much of an Act passed in the thirty-fourth year of his present Majesty, as relates to the Amount of the Sums to be paid by Persons compounding for the Performance of Statute Duty;" and also an Act passed in the fifty-fourth year of the reign of King George the Third, intituled "An Act to amend an Act of the thirteenth

REPEAL.

24 G. 2, c. 43,
in part, except as to
London;30 G. 2, c. 22,
except as to
London;

13 G. 3, c. 78.

34 G. 3, c. 64.

34 G. 3, c. 74.

Part of 42 G.
3, c. 90.

44 G. 3, c. 52.

54 G. 3, c.
109;

PROCEEDINGS
TO COMPEL
REPAIR.

and 55 G. 3,
c. 68.

Not to revive
repealed
Acts.

Mode of pro-
ceeding be-
fore justices
if highway is
out of repair.

year of his present Majesty, to explain, amend, and reduce into one Act the Statutes now in force for the Amendment and Preservation of the public Highways within England, and for other Purposes;" and also an Act passed in the fifty-fifth year of the reign of King George the Third, intituled "An Act to amend an Act of the thirteenth year of his present Majesty, for the Amendment and Preservation of the public Highways, in so far as the same relates to Notice of Appeal against turning or diverting a public Highway, and to extend the Provisions of the same Act to the stopping up of unnecessary Roads;" shall be and the same are hereby repealed (a).

II. Provided always and be it enacted, That nothing herein contained shall extend or be construed to extend so as to revive or give any force or effect to any Act repealed by the said recited Acts or any of them, but such Acts shall be and continue repealed in such and the like manner as if this Act had not been made.

XCIV. And be it further enacted, That, from and after the commencement of this Act, if any highway is out of repair or is not well and sufficiently repaired and amended (b), and information thereof, on the oath of one

(a) This section includes a repeal of all the provisions under the general highway laws relating to statute labour. This mode of repairing roads was first introduced by 2 & 3 P. & M. c. 8, which was altered and amended by 5 Eliz. c. 13, and 18 Eliz. c. 10, and 7 & 8 W. 3, c. 30, s. 5. These laws were consolidated by 7 G. 3, c. 42, which was repealed by 13 G. 3, c. 78, the second General Highway Act. The latter statute, therefore, with the amended Acts of 34 G. 3, c. 74; 44 G. 3, c. 52; and 54 G. 3, c. 109, contained all the regulations upon the subject at the time of this repeal.

Proceedings
to compel
repair.

(b) Before this Act, there were three ways by which parties or districts liable to the repair of highways might be prosecuted for suffering them to decay: by indictment, by information, and by the presentment of a Judge or justice of the peace. Of these the indictment has been the most usual course of proceeding. The presentment, which was formerly regulated by 5 Eliz. c. 13, s. 9, and subsequently by 13 G. 3, c. 78, s. 24, is now entirely abolished (see sect. 99 of this Act), and the summary proceedings set forth in the above section substituted in lieu of it, except where the obligation to repair comes in question, in which case the proceeding must be by indictment. See sect. 95, post, p. 281. The Court will not entertain an application for a *mandamus* to compel the repair of roads: *Reg. v. Oxford and Witney Road Trus-*

credible witness, is given to any justice of the peace, it shall and may be lawful for such justice, and he is hereby authorised and required, to issue a summons requiring the surveyor of the parish(c), or other person or body politic or corporate chargeable with such repairs, to appear before the justices at some special sessions for the highways in the said summons mentioned, to be held within the division in which the said highway may be situate(d); and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in special sessions assembled, on a certain day and place to be then and there fixed, at which the said surveyor of the highways or other party as aforesaid shall be directed to attend, or the said justices shall fix a day whereon they or any two of them shall attend to view the said highway; and if to the justices at such special sessions, on the day and at the place so fixed as aforesaid, it shall appear, either on the report of the said person so appointed by them to view(e), or on the view of such justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at such last-mentioned special sessions shall convict the said surveyor or other party liable to the repair of the said highway in any penalty not exceeding five pounds(f), and shall make

PROCEEDINGS
TO COMPEL
REPAIR.
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tees, 12 A. & E. 427. A mandamus has, however, been granted to *reinstate* a highway: *R. v. Severn Railway Co.*, 2 B. & Ald. 646; *R. v. Commissioners of Dean Inclosure*, 2 M. & Sel. 80.

(c) A single magistrate has no authority, under this section, to summon the surveyor of *turnpike* roads: *George v. Chambers*, 11 M. & W. 149. Nor can the justices, on the hearing, inflict costs on the surveyor under 18 G. 3, c. 19, s. 1; and if they do, and his goods be taken as a distress for such costs, he may have an action of *replevin* against the justices: *Ib.*

(d) See Form of Summons, Appendix, No. 53. And see *Reg. v. Martin*, 2 Q. B. 1037.

(e) The justices are not bound by this report, but may nevertheless exercise their discretion whether they will convict the surveyor: *Reg. v. Wilts Justices*, 8 Dowl. 717.

(f) See Form of Conviction, Appendix, No. 54.

PROCEEDINGS
TO COMPEL
REPAIR.

Turnpike
roads.

In what
cases justices
cannot inter-
fere.

an order on the said surveyor, or other person or bodies politic or corporate liable to repair such highway, by which order they shall limit and appoint a time for the repairing of the same (*g*), and in default of such repairs being effectually made within the time so limited, the said surveyor or such other person or body politic or corporate as aforesaid, shall forfeit and pay to some person to be named and appointed in a second order a sum of money to be therein stated, and which shall be equal in amount to the sum which the said justices shall, on the evidence produced before them, judge requisite for repairing such highway (*h*), which money shall be recoverable in the same manner as any forfeiture is recoverable under this Act (*i*), and such money when recovered shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their said order what proportion shall be paid by each of the said parties: Provided, that if the said highway so out of repair is a part of the turnpike road (*k*), the said justices shall summon the treasurer or surveyor or other officer of such turnpike road, and the order herein directed to be made shall be made on such treasurer or surveyor or other officer as aforesaid, and the money therein stated shall be recoverable as aforesaid: Provided nevertheless, that the said justices shall not have power to make such order as aforesaid in any

(*g*) See Form of Order, Appendix, No. 55.

(*h*) See Form of Order, Appendix, No. 56.

(*i*) i. e. by summary proceedings before the magistrates: see ss. 101, 103.

Turnpike
roads.

(*k*) Although the magistrates' order is required to be made upon the treasurer or surveyor of the turnpike road, if the highway out of repair is a part of such turnpike road, yet, should the duty or obligation to repair be questioned on the part of the trustees under the last clause of this section, the proceedings must be by indictment: see sect. 95. As to the liability of the parish to repair turnpike roads, see observations on 7 & 8 G. 4, c. 24, s. 17, ante, p. 241.

case where the duty or obligation of repairing the said highway comes in question (*l*).

PROCEEDINGS
TO COMPEL
REPAIR.

XCV. And be it enacted, That if, on the hearing of any such summons respecting the repair of any highway, the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, it shall then be lawful for such justices, and they are hereby required, to direct a bill of indictment to be preferred (*m*), and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway shall be, against the inhabitants of the parish or the party to be named in such order for suffering and permitting the said highway to be out of repair (*n*); and the costs of such prosecution shall be

Mode of proceeding if obligation to repair is disputed.

(*l*) In order to ascertain whether any road in existence at the commencement of this Act is a highway, and, if so, whether it is repairable by the parish or by any other party, it will be necessary to advert to the principles of the common law; as to which see observations on 7 & 8 G. 4, c. 24, s. 17, ante, p. 241.

Obligation to repair highway.

(*m*) Where, on an indictment being so preferred, the grand jury ignored the bill, some of them being landowners in the indicted parish and taking part in the discussion whether a bill should be found, the Court of Queen's Bench granted a criminal information against the inhabitants of the parish: *Reg. v. Upton St. Leonard's*, 10 Q. B. 827. See *Reg. v. Hertfordshire Justices*, 6 Q. B. 753.

The order directing an indictment under this section must shew, on the face of it, expressly or by reasonable intendment, that it was made at a special session for the highways held within the division in which the highway is situate; otherwise it is void, and an order for costs, made under sect. 95, by the Judge who tried the cause, will be set aside: *Reg. v. Morice*, 2 D. & L. 952; *Reg. v. Inhabitants of Watford*, 4 D. & L. 593; *Reg. v. Martin*, 2 Q. B. 1037; *Reg. v. Hickling*, 7 Q. B. 890.

(*n*) If the liability to repair comes into question, recourse must be had to the old remedy by indictment (see note on sect. 94,

Indictment.

PROCEEDINGS
TO COMPEL
REPAIR.
—

directed by the Judge of assize before whom the said indictment is tried, or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of this Act in the parish in which such highway shall be situate(o): Provided nevertheless, that it

ante, p. 278). The general nature of this proceeding will be seen by the Form of Indictment inserted in the Appendix, No. 57. In addition to which, it may be shortly mentioned here, that in every indictment against a parish for not repairing a highway, it is necessary to state that it is a highway, that it is out of repair, and that it is situated in the parish. And if the indictment be against a district, &c., it must shew in what manner such district, &c., became liable, and to what extent it is bound to repair. If the road is contended to be in good repair, or not to be a highway, the plea to the indictment may be the general issue, not guilty. But a parish wishing to throw the liability to repair upon some particular subdivision, &c., must plead the liability of such subdivision, &c., specially, unless the parish has been exempted by Act of Parliament, in which case the general issue will be sufficient. Under a plea of not guilty, also, a particular person or division may throw the burthen of repairs either upon the parish or upon an individual; but if special matter is pleaded, the particular party liable to repair must be named. See Chitty's Criminal Law, Archbold's Criminal Pleading, &c.

(o) Where the obligation to repair is disputed, and an indictment is directed under this section, and the defendants are convicted, the prosecutor is in general entitled, as a matter of right, to an order for the costs of the prosecution: *Reg. v. Yarkhill*, 9 Car. & P. 218. Not so where the defendants are acquitted on the ground of the indicted road not having been proved to be a highway: *Reg. v. Chedworth*, Id. 285; *Reg. v. Paul*, 2 M. & Rob. 307; *Reg. v. Heanor*, 6 Q. B. 745; *Reg. v. Downholland*, 2 New Sess. Cas. 177; or where it is not proved to be the highway set out in the order of justices: *Reg. v. Fifehead*, 3 Cox's C. L. Cas. 59; or where it is not proved that the order directing the indictment was made at a special session for the highways held within the division in which the highway is situate: *Reg. v. Watford*, 9 D. & L. 593; see *Reg. v. Hickling*, 7 Q. B. 890; or where the defendants plead guilty (for then the indictment is not *tried*

shall be lawful for the party against whom such indictment shall be so preferred at the quarter sessions as aforesaid to remove such indictment by certiorari or otherwise into his Majesty's Court of King's Bench (*p*). FINES, &c.
—

XCVI. And be it further enacted, That no fine, issue, penalty, or forfeiture for not repairing the highway, or not appearing to any indictment for not repairing the same, shall hereafter be returned into the Court of Exchequer or other Court, but shall be levied by and paid into the hands of such person residing in or near the parish where the road shall lie, as the justices or Court imposing such fines, issues, penalties, or forfeitures shall order and direct, to be applied towards the repair and amendment of such highway (*q*); and the person so Fines, penalties, and forfeitures, how to be levied and applied.

within the meaning of the statute): *Reg. v. Vowchurch*, 2 C. & K. 393; *Reg. v. Aston Ingham*, *Reg. v. Linton*, 1 Russ. Cr. 374. And on an indictment preferred under this section, the Judge at the assizes may, it seems, award costs to the prosecutor for a frivolous defence, under sect. 98: *Reg. v. Pembridge*, 3 Q. B. 901; see *R. v. Upper Papworth*, 2 East, 413; though it had been thought otherwise; see *Reg. v. Preston*, 2 M. & Rob. 137. So, a Judge who tries at Nisi Prius an indictment preferred under this section, and removed by *certiorari* into the Court of Queen's Bench, has the same power to award the costs: *Reg. v. Great Broughton*, 2 M. & Rob. 444; *Reg. v. Pembridge*, *supra*; so also has the Court of Queen's Bench itself: *Reg. v. Preston*, 7 Dowl. 93. The amount of the costs, where ordered to be paid, must be ascertained by the Judge or his officer: *Reg. v. Clark*, 5 Q. B. 887. And the order, besides stating the amount, must state out of what fund it is to be paid: *Reg. v. Watford*, *supra*.

(*p*) As to the removal of indictments by certiorari, see 5 & 6 W. 4, c. 33; and 16 & 17 Vict. c. 30.

(*q*) See 3 G. 4, c. 126, s. 110, as to dividing the fine between the trustees and the parish, *ante*, p. 102. If, after conviction and before order for payment of the fine, the defendants effectually repair the road, they are entitled to a stay of proceedings; and the prosecutor cannot claim the fine on behalf of third parties, for repairs done before the conviction: *Reg. v. Barnard Castle*, 10 L. J., M. C., 53.

INDICTMENT. ordered to receive such fine shall and is hereby required to receive, apply, and account for the same according to the direction of such justices or Court, or in default thereof shall forfeit double the sum received; and if any fine, issue, penalty, or forfeiture to be imposed for not repairing the highway, or not appearing as aforesaid, shall hereafter be levied on any inhabitant of such parish, township, or place, then such inhabitant shall and may make his complaint to the justices at a special sessions for the highways; and the said justices are hereby empowered and authorised, by warrant under their hands, to make an order on the surveyor of the parish for payment of the same out of the money receivable by him for the highway rate, and shall within two months next after service of the said order on him pay unto such inhabitant the money therein mentioned (*r*).

Court may
award costs
to the prose-
cutor.

XCVIII. And be it further enacted, That it shall and may be lawful for the Court before whom any indictment shall be preferred (*t*) for not repairing high-

(*r*) An application, under the repealed Act, 13 G. 3, c. 78, s. 47, for a rate to reimburse two inhabitants of a parish, upon whom a fine for non-repair of a highway had been levied, after conviction of the parish upon an indictment, must have been made within a reasonable time after such levy, and before any material change of the inhabitants of the parish. And a *mandamus* to make such rate was refused after a lapse of eight years, though in the meantime applications had from time to time been made to the magistrates, who had declined to make the rate on the ground that the parish was not, in truth, liable to repair the highway; and though, so lately as in the year before the application, the magistrates had ordered an account to be taken of the amount expended on the repairs, and the balance in hand to be paid to the inhabitants out of the money levied: *Rex v. Lancashire Justices*, 12 East, 366. See *Rex v. Townshend*, 2 Dougl. 420.

(*s*) This word "preferred" may mean carried on in any stage. Therefore, where the indictment is removed into the Court of Queen's Bench by *certiorari*, and tried at *Nisi Prius*, the Judge may certify and give an order for costs under this section: *Reg.*

ways to award costs to the prosecutor (*t*), to be paid by the person so indicted (*u*), if it shall appear to the said Court that the defence made to such indictment was frivolous or vexatious. INDICTMENT.

XCIX. And be it further enacted, That, from and after the commencement of this Act, it shall not be lawful to take or commence any legal proceeding, by presentment, against the inhabitants of any parish, or other person, on account of any highway or turnpike road being out of repair (*x*). No presentment against inhabitants for highway being out of repair.

CXIII. Provided always, and be it further enacted, That nothing in this Act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, or pavements, which now are or may hereafter be paved, repaired, or cleansed, broken up, or diverted, under or by virtue of the provisions of any local or personal Act or Acts of Parliament. Not to extend to turnpike roads, or to roads under local Acts.

v. Pembridge, 3 Q. B. 901; see *R. v. Upper Papworth*, 2 East, 413; *Reg. v. Preston*, 7 Dowl. 593. (Former cases to the contrary are overruled—see *Reg. v. Paul*, 2 M. & Rob. 307; *Reg. v. Challicombe*, Id. 311.) The Judge may also certify for a special jury: *Ib.* Where costs have been so awarded under this section, and have been allowed by a rule of Court, obedience to such rule may be enforced by attachment, notwithstanding sect. 103: *Reg. v. Pembridge*, supra; see *R. v. Salwick*, 6 M. & Sel. 136. The certificate will entitle the prosecutor to the costs, though the defendant may have obtained a rule to arrest the judgment; for the Court has no control over the award of the Judge: *R. v. St. John, Margate*, 6 M. & Sel. 130.

A mere statement on the back of the record, that the defence was frivolous or vexatious, is a sufficient certificate: *Rex v. Clifton*, 6 T. R. 344.

(*t*) See *R. v. Commerell*, 4 M. & Sel. 207; *R. v. Incledon*, 1 M. & Sel. 268.

(*u*) The Judge may order payment by parishioners not named in the indictment: *R. v. Commerell*, supra.

(*x*) See note on sect. 94, ante, p. 278; and see *Reg. v. Mawgan*, 8 A. & E. 496.

DECLARA-
TIONS.
—
Commence-
ment of Act.

CXIX. And be it further enacted, That this Act shall commence and take effect from and after the twentieth day of March, one thousand eight hundred and thirty-six.

5 & 6 WILL. IV. CAP. 62, ss. 7, 10, 13, 20—22.

An Act to repeal an Act of the present Session of Parliament, intituled "An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof; and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits;" and to make other Provisions for the Abolition of unnecessary Oaths.

[9th September, 1835.]

Oaths in
courts of
justice, &c.,
still to be
taken.

VII. PROVIDED also, and be it enacted, That nothing in this Act contained shall extend or apply to any oath, solemn affirmation, or affidavit which now is or hereafter may be made or taken, or be required to be made or taken in any judicial proceeding in any court of justice, or in any proceeding for or by way of summary conviction before any justice or justices of the peace; but all such oaths, affirmations, and affidavits shall continue to be required and to be administered, taken, and made, as well and in the same manner as if this Act had not been passed.

Declaration
substituted
for oaths &c.
by persons
acting in
turnpike
trusts.

X. And be it enacted, That, in any case where, under any Act or Acts for making, maintaining, or regulating any highway, or any road, or any turnpike road, or for paving, lighting, watching, or improving any city, town, or place, or touching any trust relating thereto, any oath, solemn affirmation, or affidavit might, but for the passing of this Act, be required to be taken or made by any person whomsoever(a), no such oath, solemn affirmation, or affidavit shall in future be required to be taken or made, but the person who might, under the Act or

(a) See 3 G. 4, c. 126, ss. 62, 146; 4 G. 4, c. 95, s. 32, &c.

Acts imposing the same, be required to take or make such oath, solemn affirmation, or affidavit shall, in lieu thereof, in the presence of the trustee, commissioner, or other person before whom he might under such Act or Acts be required to take or make the same, make and subscribe a declaration to the same effect as such oath, solemn affirmation, or affidavit, and such trustee, commissioner, or other person is hereby empowered and required to administer and receive the same.

DECLARATIONS.

XIII. And whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial inquiry, nor in anywise pending or at issue before the justice of the peace or other person by whom such oaths or affidavits have been administered or received: and whereas doubts have arisen whether or not such proceeding is illegal; for the more effectual suppression of such practice and removing such doubts, be it enacted, That, from and after the commencement of this Act, it shall not be lawful for any justice of the peace or other person to administer, or cause or allow to be administered, or to receive, or cause or allow to be received, any oath, affidavit, or solemn affirmation touching any matter or thing whereof such justice or other person hath not jurisdiction or cognizance by some statute in force at the time being: Provided always that nothing herein contained shall be construed to extend to any oath, affidavit, or solemn affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences, or touching any proceedings before either of the Houses of Parliament or any committee thereof respectively, nor to any oath, affidavit, or affirmation which may be required by the laws of any foreign country to give validity to instruments in writing designed to be used in such foreign countries respectively.

Justices not to administer oaths, &c., touching matters whereof they have no jurisdiction by statute.

XX. And be it further enacted, That, in all cases where a declaration in lieu of an oath shall have been substituted by this Act, or by virtue of any power or

Declarations to be in the form prescribed by Schedule.

DECLARATIONS.

authority hereby given, or where a declaration is directed or authorised to be made and subscribed under the authority of this Act or of any power hereby given, although the same be not substituted in lieu of an oath heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule hereunto annexed.

Persons making a false declaration, deemed guilty of a misdemeanor.

XXI. And be it further enacted, That, in any case where a declaration is substituted for an oath under the authority of this Act, or by virtue of any power or authority hereby given, or is directed and authorised to be made and subscribed under the authority of this Act, or by virtue of any power hereby given, any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

Commencement of Act.

XXII. And be it enacted, That this Act shall commence and take effect from and after the first day of October in this present year, the year of our Lord one thousand eight hundred and thirty-five.

SCHEDULE

Referred to by the foregoing Act.

I, A. B. (b), do solemnly and sincerely declare, that ——— and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the ——— year of the reign of his present Majesty, intituled “An Act” [*here insert the title of this Act.*]

(b) See Appendix, No. 39, post.

2 & 3 VICT. CAP. 46.

An Act to authorise the Trustees of Turnpike Roads to reduce the Scale of Tolls payable for Overweight (a).

[17th August, 1839.]

WHEREAS, by an Act passed in the third year of the reign of his Majesty King George the Fourth, to amend the laws for regulating turnpike roads, the trustees or commissioners of any turnpike road are authorised to cause weighing machines to be erected at any of the turnpike gates under their control, and by a notice for that purpose, to be given as in the said Act is directed, to order every waggon or carriage conveying goods or merchandize, and coming within one hundred yards of such machine, to be weighed: And whereas, by the said recited Act, and by virtue of another Act passed in the fourth year of the reign of his Majesty King George the Fourth, also passed for regulating turnpike roads, the trustees and commissioners of any turnpike road are authorised to receive certain tolls for overweight at any weighing machines so erected: And whereas it is desirable to authorise the trustees or commissioners of turnpike roads upon which such weighing machines may be erected, to reduce the scale of tolls payable by the said recited Acts or either of them for overweight: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the trustees or commissioners of any turnpike road may and are hereby empowered, at any meeting or meetings to be held for the purpose, (of which meeting or meetings and the purposes thereof fourteen days notice shall be given), to lower the several additional tolls by the said recited Acts or either of them directed to be taken for overweight, in such manner as

Trustees
empowered
to reduce ad-
ditional tolls
for over-
weight.

(a) See 3 G. 4, c. 126, ss. 15, 21; 4 G. 4, c. 95, s. 10.

EXEMPTION
OF POLICE.

to them shall seem fit and convenient, and from time to time to take such reduced tolls for overweight as shall be fixed and agreed on at such meeting or meetings.

2 & 3 VICT. CAP. 47, s. 10.

An Act for further improving the Police in and near the Metropolis. [17th August, 1839.]

Exemption
from turn-
pike tolls.

X. AND be it enacted, That no toll shall be demanded or taken on any turnpike road or bridge for any horse or police van passing along such road or bridge in the service of the metropolitan police, provided that the rider of such horse or driver of such van shall have his dress and accoutrements according to the regulations of the police force at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty not more than five pounds; and in all such cases the proof of exemption shall be upon the person claiming the same.

3 & 4 VICT. CAP. 39.

An Act to authorise Trustees or Commissioners of Turnpike Roads to appoint Meetings for executing their Trusts in certain Cases(a). [4th August, 1840.]

3 G. 4, c. 126,
s. 70.

WHEREAS an Act was passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," whereby it was enacted, that where a sufficient number of the trustees or commissioners of any turnpike road should not meet on the day appointed by any Act or Acts of Parliament for

(a) See 4 G. 4, c. 35, ante, p. 157.

making, repairing, or maintaining any turnpike road for their first meeting, or should not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means, or by some or one of them, the intent of such Act or Acts might be frustrated, in all or either of the said cases it should be lawful for so many of the said trustees or commissioners as should meet, or the major part of them, or, in case no such trustee or commissioner should be present, for their clerk or clerks, to cause notice in writing to be affixed on all the turnpike gates which should be then erected on the said respective roads, or if no turnpike gates should then be erected to cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired should lie, and also in some public newspaper circulated in the county in which the road should be situate, at least ten days before the intended meeting appointing such trustees or commissioners to meet at such place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees or commissioners, if no such preceding meeting should have been held; and the said trustees or commissioners, when met in pursuance of such notice, should and might and they were thereby required to proceed and carry such Act or Acts into execution, in the same and in as ample and full a manner to all intents and purposes as they might or could have done if no such neglect had happened: And whereas the said recited provisions have been found inadequate to the purposes intended to be provided for, and it is expedient that more ample provision should be made: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That the said recited provisions shall be and the same are hereby repealed.

MEETINGS.

Repeal of
recited pro-
visions of
Act 3 G. 4,
c. 126.

II. And be it enacted, That where a sufficient number of the trustees or commissioners of any turnpike

Providing for
cases where
sufficient

MEETINGS.

—
number of
trustees do
not attend
on the day
appointed
for the first
meeting of
trustees un-
der any Act
relating to
turnpike
roads.

road shall not meet on the day appointed by any such Act or Acts respectively for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means, or by some or one of them, the intent of the said Act or Acts may be frustrated, in all or either of the said cases it shall be lawful for so many of the said trustees or commissioners as shall meet, or the major part of them, or in case no such trustee or commissioner shall be present, for their clerk or clerks, or in case of the death, resignation, absence, incapacity, neglect, or refusal of such clerk or clerks, for any five or more of such trustees or commissioners, to cause notice in writing to be affixed on all the turnpike gates which shall be then erected on the said respective roads, or if no turnpike gate shall then be erected to cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired do lie, and also in some public newspaper circulated in the county in which the road shall be situate, at least ten days before the intended meeting, appointing such trustees or commissioners to meet at the place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees or commissioners, if no such preceding meeting shall have been held; and the said trustees or commissioners, when met in pursuance of such notice, shall and may and they are hereby required to proceed and carry such Act or Acts into execution in the same and in as ample and full a manner to all intents and purposes as they might or could have done if no such neglect had happened.

3 & 4 VICT. CAP. 51.

An Act to amend and explain the general Turnpike Acts, so far as relates to the Toll payable on Carriages or Horses laden with Lime for the Improvement of Land (a). [4th August, 1840.]

WHEREAS an Act was passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled "An Act to explain so much of the general 4 G. 4, c. 6. Turnpike Act as relates to the Toll payable on Carriages laden with Lime for the Improvement of Land;" and whereas doubts have arisen in the construing of the said Act; for removing which doubts be it declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That nothing in the said general Turnpike Act, passed in the third year of the reign of his said late Majesty, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," shall extend or be construed to extend to enable any collector or collectors of tolls under the authority of any local Act or Acts to take or demand any toll for horses or carriages employed in carrying or conveying lime on any turnpike road for the improvement of land, when carriages or horses laden with lime for the improvement of land are exempted from the payment of toll by any such local Act or Acts now in force, or which were exempted from the payment of toll by any local Act or Acts in force at the time of the passing of the said recited Act of the third year of the reign of his late Majesty King George the Fourth, but since repealed.

Nothing in the Act 3 G. 4, c. 126, shall enable collectors to take toll for horses carrying lime for the improvement of land.

(a) See 3 G. 4, c. 126, s. 32, ante, p. 24; 4 G. 4, c. 16, ante, p. 156; 4 G. 4, c. 95, s. 23, ante, p. 170; 5 & 6 W. 4, c. 18, ante, p. 275; 13 & 14 Vict. c. 79, s. 3, post, p. 309.

EXEMPTION
OF POLICE.

3 & 4 VICT. CAP. 88, s. 1.

An Act to amend the Act for the Establishment of County and District Constables. [7th August, 1840.]2 & 3 Vict. c.
93.Horses, &c.,
in the service
of the police
exempted
from toll.

WHEREAS an Act was passed in the last session of Parliament, intituled "An Act for the Establishment of County and District Constables by the Authority of Justices of the Peace;" and it is expedient to make additional provisions for facilitating the execution thereof, and otherwise to amend the same: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That no toll shall be demanded or taken on any turnpike road or bridge for any horse, or police van, carriage, or cart, passing along such road or bridge, in the service of the police established under the provisions of the said Act; provided that the constable (a) in charge of such horse, van, carriage, or cart, if not the chief constable, shall produce an order in writing under the hand of the chief constable, or shall have his dress according to the regulations of the police force at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty not more than five pounds; and in all such cases the proof of exemption shall be upon the person claiming the same.

(a) This word includes superintending constables appointed under 13 & 14 Vict. c. 20; 14 & 15 Vict. c. 38, s. 4, post.

4 & 5 VICT. CAP. 33.

An Act to amend the Acts for regulating Turnpike Roads in England, so far as they relate to certain Exemptions from Toll (a). [21st June, 1841.]

WHEREAS doubts are entertained whether, under the provisions of an Act passed in the third year of the reign of his late Majesty King George the Fourth, intituled 3 G. 4, c. 126 “An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England,” and of several other Acts amending the same, asses, beasts, or cattle, other than horses, or waggons, carts, or vehicles, other than carriages, which shall only cross any turnpike road, or shall not pass above one hundred yards thereon, are exempted from tolls: For the removal, therefore, of such doubts, be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That no toll shall be demanded or taken for or in respect of any horse, ass, sheep, swine, or other beast or cattle, of any kind whatsoever, or of any waggon, cart, vehicle, or other carriage, of any kind whatsoever, which shall only cross any turnpike road, or shall not pass above one hundred yards thereon.

Toll not to be taken for carts, &c., crossing roads, or passing not above 100 yards thereon.

II. And be it enacted, That all and every the powers, provisions, authorities, penalties, and forfeitures contained in the said recited Act, and in the several other Acts for regulating turnpike roads in England, (save and except such parts thereof as are varied, altered, or repealed,) shall be as good, valid, and effectual for carrying this Act into execution as if the same had been repeated and re-enacted in the body of this Act, and that

Extending powers of former Acts to this Act.

(a) Sec. 3 G. 4, c. 126, s. 33, ante, p. 29. This is a merely declaratory Act, and does not create any new exemption from toll: *Harris v. Morrice*, 10 M. & W. 260. See *Bussey v. Storey*, 4 B. & Ad. 98, ante, p. 29, and Appendix, post.

MATERIALS
FROM
INCLOSED
LANDS.

Not to affect
roads ex-
empted by
recited Act.

the said recited Act and this Act shall be construed together as one Act.

III. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to or affect any road or roads in the said recited Act mentioned to be exempted from the provisions thereof.

4 & 5 VICT. CAP. 51.

An Act to amend an Act of the Third Year of King George the Fourth, for regulating Turnpike Roads in England, and also an Act of the Fifth and Sixth Years of King William the Fourth, for consolidating the Laws relating to Highways in England (a).

[21st June, 1841.]

3 G. 4, c. 126. WHEREAS, by an Act passed in the third year of the reign of King George the Fourth, intituled "An Act to amend the general Laws now in being for the regulating Turnpike Roads in that part of Great Britain called England," it is amongst other things enacted, "that it shall not be lawful for any surveyor, or any other person or persons acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any turnpike road, or for other such purpose or purposes as aforesaid, out of or from any inclosed land or ground, until notice in writing, signed by the surveyor, shall have been given to the owner or owners of the premises from which such materials are intended to be taken, or his or her known agent, or to the occupiers of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or occupier, to appear before any two or more justices of the peace acting in and for the county, liberty, or place where the lands from whence such materials are intended to be taken shall be, to shew

(a) See 3 G. 4, c. 126, s. 98, ante, p. 89.

cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not shew sufficient cause to the contrary, such justices shall, if they think proper, authorise such surveyor or other person to dig, get, gather, take, or carry away such materials, at such time or times as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear, by himself or herself, or his or her agent, the said justices shall and may (upon proof on oath of the service of such notice, and which oath they are hereby empowered to administer,) make such order therein as they shall think fit, as fully and effectually, to all intents and purposes, as if such owner or occupier, or his or her agent, had attended:" And whereas by an Act passed in the session held in the fifth and sixth years of the reign of King William the Fourth, intituled "An 5 & 6 W. 4, c. 50. Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," it is amongst other things enacted, "that it shall not be lawful for any surveyor, or any other person acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any highway out of or from any inclosed land or ground, until one calendar month's notice in writing, signed by the surveyor, shall have been given to the owner of the premises from which such materials are intended to be taken, or to his known agent, and to the occupier of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or agent, and also of such occupier, to appear before the justices at a special sessions for the highways, to shew cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not shew sufficient cause to the contrary, such justices shall, if they think proper, authorise such surveyor, or other person to dig, get, gather, take, and carry away such materials, at such time or times as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear, by

MATERIALS
FROM
INCLOSED
LANDS.

MATERIALS
FROM
INCLOSED
LANDS.

Lands in the
exclusive
occupation of
persons for
agricultural
purposes to
be deemed
inclosed
lands.

himself or his agent, the said justices shall and may, upon proof on oath of the service of such notice, make such order therein as they shall think fit, as fully and effectually, to all intents and purposes, as if such owner or occupier, or his agent, had attended:" And whereas doubts have been entertained whether the words "inclosed land or ground," used in the said recited Acts, include land being the private and exclusive property of any person or persons, but not being actually inclosed with a fence: And whereas large portions of such land are occupied for agricultural purposes by the owners or occupiers thereof respectively, without the same being inclosed with any fence; and it is expedient that the materials referred to in the said recited Acts should not be taken from any such land without previous notice being given to the owners or occupiers thereof, and the authority hereinafter mentioned obtained for that purpose: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, all lands and grounds which shall be in the exclusive occupation of one or more persons for agricultural purposes, shall be deemed and taken to be inclosed lands or grounds within the meaning of the said recited Acts, although the same may not be separated from any adjoining lands or grounds of other persons, or from the highway, by any fence or other inclosure.

—◆—

4 & 5 VICT. CAP. 59.

An Act to authorise for One Year, and until the End of the then next Session of Parliament, the Application of a Portion of the Highway Rates to Turnpike Roads in certain Cases.
[22nd June, 1841.]

5 & 6 W. 4,
c. 50.

WHEREAS an Act was passed in the fifth and sixth years of his late Majesty, intituled "An Act to consolidate and amend the Laws relating to Highways in

that part of Great Britain called England," whereby divers statutes passed in the reign of his late Majesty King George the Third, relating to the performance of statute duty, were repealed, and statute duty was thereby altogether abolished: And whereas the revenues of some turnpike roads are so unequal to the charge and maintenance of such roads, after paying the interest and principal of the sums due upon mortgage of the tolls thereof, when deprived of the aid heretofore derived from statute duty, that it is necessary that some additional provision be made for such roads, for a limited period: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for the justices at any special sessions (a) for the highways holden after the passing of this Act, upon information exhibited before them by the clerk or treasurer of any turnpike trust, that the funds of the said trust are insufficient(b)

APPLICATION
OF HIGHWAY
RATE TO
TURNPIKES.

Justices at
special ses-
sions for
highways, on
proof of the
deficiency of
the funds,
&c., of any

(a) That is, the special sessions holden under the 5 & 6 W. 4, c. 50, s. 45: *Reg. v. Morice*, 2 D. & L. 952. The order of the special sessions made under this section must state on the face of it that it was made at a special sessions holden in and for the division of the county in which the turnpike road is situate: *Ibid.*; *Reg. v. Justices of Derbyshire*, 7 Q. B. 193.

(b) See *Reg. v. Justices of Berkshire*, 8 Dowl. 726. Where, by a Turnpike Road Act, the monies and effects of the trusts were to be applied, first, in paying the costs, &c., of the passing of the Act; secondly, in making and repairing the roads, turnpikes, &c.; thirdly, in paying the interest of money secured on the credit of the tolls; fourthly, in paying the principal: it was held that the justices in special sessions had power, under 2 & 3 Vict. c. 81, s. 1 (expired), to make an order for paying a specified portion of the assessment levied by the surveyors of the highways, under 5 & 6 W. 4, c. 50, s. 27, to the treasurer of the turnpike trustees, in a case where the trust funds had been exhausted by paying the interest of a debt secured on the tolls, although, if such payment had not been made, they would have been sufficient for the repair of the roads, &c.: *Reg. v. White*, 4 Q. B. 101.

APPLICATION
OF HIGHWAY
RATE TO
TURNPIKES.

turnpike
trust, may
order pay-
ment to said
trust of a
portion of the
highway
rate.

for the repairs of the turnpike roads within any parish, notice in writing (c) of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions, to examine the state of the revenues and debts of such turnpike trusts, and to inquire into the state and condition of the repairs of the roads within the same, and also to ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike road, and if after such examination (d) it shall appear to the said justices necessary or expedient, for the purposes of any turnpike road, so to do, then to adjudge and order (e)

(c) A notice given by the clerk of the trust, stating, that "it was intended to exhibit an information that the funds of the trust are insufficient for the repairs of the turnpike road belonging to the trustees within the hamlet of B., and then and there to apply to such justices to adjudge and order a portion of the rate levied or to be levied to be paid by you to the said trustees or their treasurer," was holden sufficient, without shewing what part of the road was out of repair, or that the part out of repair was within the sessional division, or for what purpose the money was to be paid: *Reg. v. Preston*, 12 Q. B. 816.

(d) The justices must *ascertain* the sum to be paid, on the principle of a proportion, and when they have arrived at it, they may and should order a specific sum to be paid. If their mode of ascertaining the proportion be wrong, an appeal will lie under s. 3, and the surveyor of highways will be called upon to rectify it: *Reg. v. Justices of Berkshire*, 8 Dowl. 727. The order need not shew in what proportion the sum to be paid under it stands to the whole rate; nor out of which of the rates allowed by 5 & 6 W. 4, c. 50, it is to be taken: *Reg. v. Morice*, 2 D. & L. 952.

(e) See *Reg. v. Morice*, 2 D. & L. 952; *Reg. v. Justices of Derbyshire*, 7 Q. B. 193; *supra*, notes (a), (d). An order made under this section need not expressly adjudicate that the notice was given to the surveyors, or that the information was true; it is sufficient if it state that the surveyors appeared in pursuance of the notice at the special sessions, and that application was there made to the justices to order &c. (in terms of the Act). Nor need it specify the particular part of the road to repair which the rate is

what portion, if any, of the rate or assessment levied or to be levied by virtue of the said recited Act shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees, or to their treasurer or other officers appointed by them on that behalf, such money to be wholly laid out in the actual repairs of such part of such turnpike road as lies within the parish from which it was received.

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OF HIGHWAY
RATE TO
TURNPIKES.

II. And be it enacted, That, if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by the said recited Act authorised to be levied (*f*).

Parish surveyor neglecting to pay such portion of rate, it may be levied by distress.

III. Provided always, and be it enacted, That, if any person shall think himself aggrieved by any order, judgment, or determination made or by any matter or thing done (*g*) by any justices of the peace at any such special sessions, in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace (*h*) to be held for the county, riding,

Power of appeal to justices at quarter sessions.

to be applied; nor set out the state of the revenues of the trust in the parish, &c., nor the length of roads there; nor the other particulars into which the justices are by this section directed to inquire: *Reg. v. Preston*, 12 Q. B. 816. Where the order is made on the surveyors of a *hamlet*, it need not expressly find that it is a hamlet maintaining its own poor; that will be intended: *Ibid.*

(*f*) See 5 & 6 W. 4, c. 50, ss. 101, 103.

(*g*) See *Reg. v. Justices of Berkshire*, 8 Dowl. 727, *supra*, n. (*d*).

(*h*) The justices who made the order under s. 1, are interested parties; so are justices to whom money secured on the tolls is owing; and if any one of the justices acting at the quarter sessions be so situated, the Court will be improperly constituted; nor is it any answer to this objection, that there was a majority in favour of the decision without reckoning the vote of the interested

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RATE TO
TURNPIKES.

division, or place wherein the cause of such complaint shall arise, such appellant first giving to such justices ten days notice in writing of the grounds of such appeal, within six days after such order, judgment, or determination shall be so made or given as aforesaid⁽ⁱ⁾, who are hereby required, within forty-eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively touching the matter of such appeal to the said justices at the general or quarter sessions aforesaid; and that, in case of such appeal, the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal; and the said justices at the said quarter sessions shall have power to award such costs to the parties appealing or appealed against as they the said justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited Act ^(k); and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form: Provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination, or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in manner aforesaid: Provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid; nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statements as aforesaid.

party; nor that he withdrew before the decision, if he appear to have joined in the discussion: *Reg. v. Justices of Hertfordshire*, 6 Q. B. 753.

⁽ⁱ⁾ The time runs from the *making*, not from the *service*, of the order: *Reg. v. Justices of Derbyshire*, 7 Q. B. 193.

^(k) 5 & 6 W. 4, c. 50, ss. 101, 103.

IV. And be it enacted, That, in construing this Act, the word “parish” shall be taken to mean and include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or other place or district maintaining its own highways.

UNION OF
TRUSTS.

Interpreta-
tion clause.

V. And be it enacted, That this Act shall extend only to England.

Extent of
Act.

VI. And be it enacted, That this Act shall continue and be in force for one year from the passing thereof, and from thence until the end of the then next session of Parliament (l).

Duration of
Act.

12 & 13 VICT. CAP. 46.

An Act to facilitate the Union of Turnpike Trusts (a).
[28th July, 1849.]

WHEREAS it is expedient, for the better and more economical management of turnpike trusts, that all which can be conveniently managed together should be united where the same can be effected without injury to the creditors of any of the said trusts: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, That, where the general annual meetings of the trustees of two or more turnpike roads have for three years next preceding (b) such notice as next hereinafter mentioned been held at the same place, or at places distant not more than ten miles from

Trustees of
several turn-
pike roads
may hold
joint meet-
ings, and if
deemed ex-
pedient to

(l) Continued by successive Acts, and ultimately by 16 & 17 Vict. c. 66, post, to the 1st October, 1854, and to the end of the then next session of Parliament.

(a) See also 13 & 14 Vict. c. 79, s. 7, post, p. 313.

(b) This restriction of three years is repealed by 13 & 14 Vict. c. 79, s. 6, post, p. 313.

UNION OF TRUSTS.

two-thirds of trustees present, trusts may be united, on assent being obtained from creditors.

each other, two or more of the trustees of each of such roads may call a joint meeting of the trustees of such several roads, at a place to be specified in the notice of such meeting, for the purpose of taking into consideration a proposition for the union of the trusts of such several roads, of which meeting and of the purpose thereof twenty-one days notice shall be given, in like manner as notice of the general annual meeting of the trustees of such respective roads is by law required to be given; and if at such meeting it shall appear to a majority, being not less than two-thirds of the trustees of each of the trusts so proposed to be united then present, that such union is expedient, and that the same can be effected without injury to the interests of any of the creditors of any of the said trusts, the said trustees may resolve to unite the same, and shall in such case, within twenty days after such meeting, send notice of such resolution, together with a report of the reasons for which the said union is considered by them expedient, and a statement of the income and expenditure of all the trusts proposed to be so united, and of the debts of every such trust, to all the creditors of the same, such notice and report to be delivered at the usual place of abode of every such creditor, or at the bank or other place where the interest on the debt due to such creditor is usually paid, with instructions to forward the same to such creditor; and whenever the assent in writing to the proposed union of the creditors of each of the said trusts to whom three-fifths in amount of the debts due from such trust shall be owing, or of persons legally qualified to assent in behalf of such creditors, shall have been obtained, the union of the said trusts, together with the assents and the reports and accounts on which such union is founded, shall be registered in the office of the clerk of the peace in every county through which the roads of such united trusts pass; and from and after the date of such registration the said trusts shall become and continue one united trust, and all the trustees of every trust so united shall be trustees of the said united trusts.

II. And be it enacted, That every such trust shall be called and known as "The United Trust of — Roads," and shall be subject to all the liabilities of each trust so united, and be entitled to all the tolls, profits, and other property of each such trust, and all payments shall be made from the common fund of the said trusts so united; and all the provisions of the general Turnpike Acts shall be applicable to such united trust.

UNION OF
TRUSTS.

United trust
subject to
liabilities
and entitled
to tolls of
each trust so
united.

III. Provided always, and be it enacted, That all special provisions in any of the said Acts as to the amount of tolls or exemptions, or other arrangements respecting any particular portion of any one of such roads, shall be held to apply to that road only, and not to the whole united trust.

Special pro-
visions in
said Acts to
apply only to
the particu-
lar road.

IV. Provided also, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to affect, destroy, or alter any right or interest of any person to or in any office under any turnpike trust to which such person may have been lawfully entitled before the passing of this Act.

Nothing to
affect rights,
&c., of per-
sons to
offices under
turnpike
trusts.

V. And be it enacted, That any trust so united may hold its subsequent meetings at any place at which any of the said trusts might have held its meetings prior to such union, and that after the expiration of three years may (a) in like manner and under the same conditions unite with any other trust, trusts, or united trust meeting at the same.

Meetings of
united trusts.

VI. And be it enacted, That this Act shall not extend to Scotland or Ireland.

Act not to
extend to
Scotland or
Ireland.

(a) *Sic.*

BORROWING
—SINKING—
FUND.
 ———

12 & 13 VICT. CAP. 87, ss. 3—8.

An Act to continue certain Turnpike Acts in Great Britain for limited Periods, and to make certain Provisions respecting Turnpike Roads in England.

[1st August, 1849.]

Sinking-fund
for discharge
of money
hereafter
borrowed.

When fund
amounts to
200*l*. it may
be applied to
reduce debt.

III. And be it enacted, That, in every case in which the trustees or commissioners of any turnpike road shall hereafter (a) borrow, charge, or secure any sum or sums of money on the credit of the tolls arising on such road, such trustees or commissioners shall, out of the tolls of such road, and in priority to all other payments thereout, except the interest on any such monies as aforesaid, and on any other monies remaining owing on the security of the said tolls, set apart a sum of five pounds per centum per annum on the amount of money so borrowed, charged, or secured; and when and so often as the sums so set apart as aforesaid shall amount to the sum of two hundred pounds, the trustees or commissioners of the road out of the tolls of which such sum has arisen shall, at any general annual or other meeting of such trustees or commissioners, apply such sum in the payment of a proportionate part of the monies borrowed, charged, or secured as aforesaid, and then remaining unpaid, to the creditors on the tolls of such road, and shall, twenty-eight days at least before such general annual or other meeting, cause notice to be given of such meeting, and of the purposes thereof, so far as the same relate to the application of the said sum, in some newspaper usually circulated in the county or counties in which such road is situate; and at such meeting such trustees or commissioners shall apply such sum, or a portion thereof, (as the case may require,) in or towards the discharge of monies owing on the security of the tolls of such road, to the creditor who shall,

(a) Extended by 13 & 14 Vict. c. 79, s. 4, post, p. 310, to debts contracted before the passing of this Act. See also 16 & 17 Vict. c. 135, ss. 3, 4, 5, post.

by proposal in writing transmitted to the clerk of such trustees or commissioners before such meeting, have offered to accept the lowest composition in respect of such monies, and shall apply the surplus (if any) of such sum, after payment to such creditor as aforesaid, or a portion of such sum, (as the case may require,) in or towards the discharge of monies owing on the security of the said tolls, to the creditor who by proposal as aforesaid shall have offered to accept the next lowest composition in respect of such monies, and so in like manner until the sum shall be exhausted; and if two or more creditors by proposals as aforesaid shall have offered to accept an equal rate of composition, it shall be lawful for such trustees or commissioners to determine by lot the preference between or amongst such creditors, or to pay such composition rateably between or amongst such creditors, as such trustees or commissioners think fit; and if there be no such proposal as aforesaid, or there be any surplus of the sum after applying the same, so far as may be necessary, in or towards the discharge of the monies to which such proposals as aforesaid relate, such trustees or commissioners may apply the said sum rateably amongst the creditors, or may pay the same to such of them as may be determined by lot, as such trustees or commissioners think fit.

BORROWING
—SINKING—
FUND.
—

IV. And be it enacted, That it shall be lawful for a mortgagee in possession of any toll gate or bar set up or erected on any turnpike road to let to farm the tolls of such gate or bar, in like manner as the trustees or commissioners of any turnpike road may let to farm the tolls of the gates on such road, and for that purpose to exercise all the like powers as such trustees or commissioners might exercise for a like purpose; and all contracts and agreements to be made or entered into for the farming or letting the tolls of such road, signed by such mortgagee, shall be as good, valid, and effectual as a contract or agreement for farming or letting the tolls of any turnpike road signed by the trustees or commissioners of such road or two or more of them.

Mortgagee in
possession
may let tolls.

V. And whereas an Act was passed in the fourth

BORROWING
—SINKING—
FUND.

3 & 4 W. 4,
c. 80.

Clerk to
trustees, &c.,
to transmit
statement to
Secretary of
State, where
general an-
nual meeting
not held.

year of King William the Fourth, intituled “An Act requiring the annual Statements of Trustees or Commissioners of Turnpike Roads to be transmitted to the Secretary of State, and afterwards laid before Parliament;” but by reason of the failure of trustees to hold their annual meetings such annual statements are in many cases not made and transmitted as by the said Act directed: Be it enacted, That, where in any year the trustees or commissioners of any turnpike road shall not hold their general annual meeting on or before the twenty-fifth day of March, according to the directions of the said Act, the clerk to such trustees or commissioners shall make out such statement of the debts, revenues, and expenditure of the trust as should have been submitted to the trustees or commissioners at such general annual meeting in case the same had been holden, and transmit a copy thereof to one of her Majesty’s principal Secretaries of State, on or before the twenty-fourth day of April in such year; and, save as hereinafter provided, every such clerk who shall neglect to make out such annual statement, or to transmit a copy thereof within the time hereinbefore prescribed for that purpose, shall for every such offence forfeit any sum not exceeding ten pounds nor less than five pounds, at the discretion of any justice or justices of the peace before whom complaint of such offence shall be made: Provided always, that it shall not be requisite for such clerk to make out such statement or transmit such copy as aforesaid for or in respect of any period during which the tolls of such road are received by any mortgagee, agent, or person other than such trustees or commissioners or their lessees or farmers.

Mortgagees
in possession
to transmit
accounts.

VI. And be it enacted, That every mortgagee, agent, or other person in possession of any toll gate or bar set up or erected on any turnpike road shall, on or before the twenty-fifth day of March in every year, make, and transmit to one of her Majesty’s principal Secretaries of State, an annual statement of the revenue of such road received by such mortgagee, agent, or other person during the year ending the thirty-first day of December

then preceding, and of the expenditure or application thereof, in the form contained in the Schedule (A.) to the said Act of the fourth year of King William the Fourth annexed, or as near thereto as circumstances will admit; and every mortgagee, agent, or other person in possession as aforesaid who shall neglect to make out and transmit such annual statement within the time hereinbefore prescribed for that purpose shall, for every such offence, forfeit any sum not exceeding ten pounds nor less than five pounds, at the discretion of any justice or justices of the peace before whom complaint of such offence shall be made.

BORROWING
—SINKING—
FUND.
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VII. And be it enacted, That the penalties hereby imposed shall be recovered and applied in the same manner as penalties imposed by an Act of the third year of King George the Fourth, intituled “An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England.”

Penalties
how to be
recovered.

3 G. 4, c. 126.

VIII. And be it enacted, That this Act shall not apply to Ireland, nor, except in respect of the continuance of the Acts hereby continued, to Scotland.

As to extension
of Act.

13 & 14 VICT. CAP. 79, ss. 3—9.

An Act to continue certain Turnpike Acts in Great Britain, and to make further Provisions respecting Turnpike Roads in England. [14th August, 1850.]

III. And be it enacted, That it shall be lawful for the trustees or commissioners of any turnpike road, in case it appear to them expedient so to do, and notwithstanding any provisions of any local Act affecting such road, and without the consent of any person or persons entitled to money borrowed and remaining due on the

Power to
trustees to
reduce or
take off tolls
on lime used
in agricul-
ture (a).

(a) See 3 G. 4, c. 126, s. 32, ante, p. 24; 4 G. 4, c. 16, ante, p. 156; 4 G. 4, c. 95, s. 23, ante, p. 170; 5 & 6 W. 4, c. 19, ante, p. 275; 3 & 4 Vict. c. 51, ante, p. 293.

BORROWING
—SINKING—
FUND.
—

credit of the tolls of such road, from time to time at any general annual or other meeting of such trustees or commissioners, (of which meeting and of the purposes thereof, so far as the same relate to the exercise of the powers given by this enactment, such trustees or commissioners shall cause notice to be given in some newspaper usually circulated in the county or counties in which such road is situate,) to reduce or wholly take off the tolls on horses, beasts, cattle, and carriages employed in carrying or conveying lime on such road for the improvement of land; and afterwards at any such meeting (of which notice shall be given as aforesaid) from time to time as they see occasion to advance or reimpose the tolls so reduced or taken off, but so that such tolls shall not be advanced beyond the amount or amounts authorised to be taken by the Act or Acts of Parliament granting such tolls: Provided always, that no such order for reducing, taking off, advancing, or reimposing such tolls shall take effect until the same has been submitted to and sanctioned by one of her Majesty's principal Secretaries of State; provided also, that, where the tolls of such road have been let to farm by the trustees or commissioners of such road, no such order reducing or taking off such tolls shall take effect until the expiration of the subsisting contract or agreement for the farming or letting thereof.

Provision in
12 & 13 Vict.
c. 87, for
forming a
sinking fund,
extended to
debts con-
tracted be-
fore passing
of said Act.

IV. And whereas, by an Act of the last session of Parliament, intituled "An Act to continue certain Turnpike Acts in Great Britain for limited Periods, and to make certain Provisions respecting Turnpike Roads in England," it was enacted (*b*), that in every case in which the trustees or commissioners of any turnpike road should thereafter borrow, charge, or secure any sum or sums money on the credit of the tolls arising on such road, such trustees or commissioners should, out of the tolls of such road, and in priority to all other payments, except such interest as therein mentioned, set apart a sum

(*b*) 12 & 13 Vict. c. 87, s. 3, ante, p. 306. See 16 & 17 Vict. c. 135, ss. 3, 4, 5, post.

of five pounds per centum per annum on the amount of money so borrowed, charged, or secured, and when and so often as the sums so set apart should amount to two hundred pounds, the trustees or commissioners of the road, out of the tolls of which such sum had arisen, should at any general annual or other meeting of such trustees or commissioners apply such sum in payment of a proportionate part of the monies borrowed, charged, or secured as aforesaid in manner therein mentioned: And whereas it is expedient to extend such enactment to debts contracted on the security of the tolls of any road before the passing of the said Act, but subject to the proviso hereinafter contained: Be it therefore enacted, That, where the trustees or commissioners of any turnpike road had before the passing of the said Act borrowed, charged, or secured any sum or sums of money on the credit of the tolls arising on such road, and any such money shall remain unpaid and unsatisfied at the time of the passing of this Act, such trustees or commissioners shall, out of the tolls of such road, after payment thereof of the interest on any monies owing on the security of the said tolls, and such sums as may be required to be set apart under the said recited enactment, and all other annual liabilities (if any) of their trust, and the necessary expenses of the repairs of such road, and of the salaries of their officers, and all other necessary expenses of their trust, set apart a sum of five pounds per centum per annum on the amount of principal money so borrowed, charged, or secured before the passing of the said Act, and remaining unpaid and unsatisfied as aforesaid, or such lesser sum as may from time to time remain after such payment as aforesaid; and when and so often as the sums so set apart shall amount to the sum of two hundred pounds, the trustees or commissioners of the road out of the tolls of which such sum has arisen shall apply such sum in or towards payment of the monies so borrowed, charged, or secured as aforesaid, and then remaining unpaid, in manner provided by the said Act with respect to the application of money arising from the sums set apart as therein mentioned, in or towards the discharge of

BORROWING
—SINKING—
FUND.
—

**BORROWING
—SINKING-
FUND.**

Secretary of
State may
authorise
trustees not
to set apart a
sinking fund.

Enactment
not to inter-
fere with
sinking funds
under local
Acts.

Mortgagee
under Acts of
the present
and future
session not
to enter
into such
possession
while inter-
est is punc-
tually paid.

monies borrowed, charged, or secured after the passing of such Act: Provided always, that it shall be lawful for one of her Majesty's principal Secretaries of State, if upon the application of the trustees or commissioners of any turnpike road he see fit so to do, by order in writing under his hand, to authorise such trustees or commissioners not to set apart any sum as hereinbefore required, or to set apart a less sum per centum per annum than the sum hereinbefore mentioned, and it shall be lawful for such Secretary of State from time to time to vary or revoke any such authority, and such order shall be binding on such trustees or commissioners: Provided also, that where provision is made under any local Act for forming a fund for the discharge of the monies borrowed, charged, or secured on the tolls of any turnpike road, this enactment shall not extend to the trustees or commissioners of such road.

V. And be it enacted, That, where any mortgage of the tolls of any turnpike road shall be made under the powers of any Act passed or to be passed in or after the present session of Parliament (other than an Act continuing the term of any existing Act), no holder of such mortgage shall be entitled to enter into possession of all or any of the toll gates, bars, chains, toll houses, or buildings upon such road, in case and so long as the interest on the mortgage debt thereby secured up to the last half-yearly or other periodical day on which such interest is payable be paid within one month after such day as aforesaid, or within one month after the same is demanded (which shall last happen), and where any mortgagee in possession as aforesaid has been fully paid all interest up to the last half-yearly or other such periodical day as aforesaid, together with any costs he may be entitled to retain out of the tolls of the road, he shall, within twenty-one days after such payment, render to the trustees or commissioners of such road an account of his receipts as such mortgagee in possession and of the application thereof, and shall pay the balance (if any) in his hand to the treasurer of such road; and shall deliver possession of all toll gates, bars, chains, toll houses, and buildings of which he may have been

in possession, to the said trustees or commissioners, or to some person appointed by them, and where no half-yearly or other periodical day is fixed by such mortgage or otherwise for the payment of interest, such interest shall for the purposes of this provision be deemed to be payable on the first day of May and the first day of November in every year.

BORROWING
—SINKING—
FUND.
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VI. And whereas in the Act to facilitate the union of turnpike trusts(c) it is enacted, that three years must expire before any other trust or united trusts can be united to any united trust; and it is expedient further to promote the union of turnpike trusts: Be it enacted, That the said restriction requiring that three years must expire before such further union can be effected be repealed.

Limitation of
three years
before union
of united
trusts, re-
pealed.

VII. And whereas divisions or districts are formed in certain trusts according to the provisions of the Acts constituting the same, and it is expedient that power should be given to unite such divisions or districts into one trust, or to enable such divisions or districts, either separately or collectively, to unite with other trusts: Be it enacted, That every division or district formed under any Act by which any turnpike trust is constituted shall, for the purposes of determining upon and effecting such union as aforesaid, be entitled to act as if it were a separate trust, and may as such, subject to all the provisions of the Act to facilitate the union of turnpike trusts, and in the manner and under the conditions therein provided, unite with any or all of the other divisions or districts in the same trust, or with any other trust or united trust; and if united with any other trust or united trust, the Act by which the trust is established to which any such division or district shall belong, save and except such parts of the same as may require the joint action of the division or district separated with the other divisions or districts from which it shall be separated, and save and except such parts as shall relate exclusively to such other divisions or districts, shall

For facilitat-
ing the union
of divisions
or districts
into one
trust.

(c) 12 & 13 Vict. c. 46, s. 1, ante, p. 303.

RELIEF OF
INSOLVENT
TRUSTS.
—

be to all intents and purposes the Act constituting the trust for the said division or district thus separated from the other divisions or districts formed under the same Act.

Short title.

VIII. And be it enacted, That, in citing this Act in other Acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Annual Turnpike Acts Continuance Act, 1850."

As to extension of Act.

IX. And be it enacted, That this Act shall not apply to Ireland, nor, except in respect of the continuance of the Acts hereby continued, to Scotland.

14 & 15 VICT. CAP. 38.

An Act to facilitate Arrangements for the Relief of Turnpike Trusts, and to make certain Provisions respecting Exemptions from Tolls. [24th July, 1851.]

WHEREAS it is expedient to facilitate arrangements with the creditors of turnpike trusts where the revenues are insufficient to keep down the interest on the debts charged thereon: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Trustees of insolvent turnpike trusts, with consent of two-thirds in value of the creditors, may apply for a provisional order for reduction of rate of interest, or extinguishment of arrears.

I. Where the revenues of any turnpike road in England applicable to the payment of the interest upon the principal money for the time being charged or secured on the tolls or revenues of such road are insufficient for the payment in full of such interest, it shall be lawful for the trustees or commissioners of such road, at any general annual or other meeting, notice being given of such meeting twenty-one days at the least before holding the same, and of the purpose thereof (so far as the same relates to the powers of this Act), in some newspaper usually circulated in the county or counties in which such road is situate, to resolve that in case such consents as hereinafter mentioned of the mortgagees be obtained, an application be made to one of her

Majesty's principal secretaries of state, for a provisional order to reduce the rate of interest on the mortgage debts charged or secured on the tolls or revenues of such road, to such amount as may be resolved on at such meeting, and for extinguishing in whole or in part the arrears of the interest on such debts, or for either of such purposes; and where any such resolution as aforesaid is made, such trustees or commissioners shall cause notice to be given, by advertisement or otherwise, of such resolution, with such information in relation to the matter of the proposed application, and the consents required by this Act, as such trustees or commissioners may think fit; and in case it appear to such trustees or commissioners at any general annual or other meeting, that the persons entitled to two thirds of the money charged or secured on the tolls or revenues of such road, and remaining unpaid, have signified in writing under their hands their consent to the proposed application, it shall be lawful for such trustees or commissioners to make an application accordingly to one of her Majesty's principal secretaries of state for a provisional order for such reduction as aforesaid of the rate of interest on the said debts, and for extinguishing in whole or in part the arrears of interest thereon, or for either of such purposes; and such application shall be signed by three or more of such trustees or commissioners, who shall therein certify that the consents required by this Act to such application have been given.

RELIEF OF
INSOLVENT
TRUSTS.
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II. All executors, administrators, guardians, trustees, and all committees of the estates of idiots and lunatics, who, as such, are for the time being entitled to any money charged or secured on the tolls or revenues of any such road, may consent to any such application as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof, and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.

Power to ex-
ecutors, &c.,
to consent.

III. It shall be lawful for such secretary of state, if he think fit, after receipt of any such application as

Secretary of
State may
make a pro-

BORROWING
—SINKING
FUND.

visional
order in pur-
suance of the
applica-
tion (a);

which order
to be binding
if confirmed
by Parlla-
ment.

(Construction
of terms.

aforesaid, to make a provisional order under his hand in pursuance of such application; and such secretary of state shall cause such provisional order to be published in such manner as he may think fit; and in case it be enacted by any Act of Parliament that such provisional order shall be confirmed and be absolute, such provisional order shall be as binding and of the like force and effect as if the provisions thereof had been expressly enacted by parliament; and every such Act shall be deemed a public general Act.

IV. The words “implements of husbandry,” in section thirty-six (b) of chapter one hundred and twenty-six of the statute of the third year of King George the Fourth, shall be deemed to include threshing machines; and the word “constable,” in section one of chapter eighty-eight of the statute of the third and fourth years of her present Majesty, shall be deemed to include superintending constables appointed under the statute of the thirteenth and fourteenth years of her Majesty, chapter twenty.

16 & 17 VICT. CAP. 135, SS. 3—8.

An Act to continue certain Turnpike Acts in Great Britain, and to make further Provisions concerning Turnpike Roads in England. [20th August, 1853.]

12 & 13 Vict.
c. 87.

III. And whereas by an Act of the session holden in the twelfth and thirteenth years of her Majesty, chapter eighty-seven, it was enacted, that in every case in which the trustees or commissioners of any turnpike road should thereafter borrow, charge, or secure any money on the credit of the tolls arising on such road, such trustees or commissioners should, out of the tolls

(a) See 15 & 16 Vict. c. 33, and 16 & 17 Vict. c. 61, confirming certain provisional orders made under this section.

(b) This should be “thirty-two.” The error is corrected by 16 & 17 Vict. c. 135, s. 6, post, p. 319.

of such road, and in priority to all other payments, except such interest as therein mentioned, set apart a sum of five pounds per centum per annum on the amount of money so borrowed, charged, or secured; and when and so often as the sums so set apart should amount to two hundred pounds, the said trustees or commissioners should apply such sum in payment of a proportionate part of the monies borrowed, charged, or secured as aforesaid in manner therein mentioned: And whereas by the Act of the session holden in the thirteenth and fourteenth years of her Majesty, chapter seventy-nine, it was enacted, that where the trustees or commissioners of any turnpike road had, before the passing of the said Act of the twelfth and thirteenth years of her Majesty, borrowed, charged, or secured any money on the credit of the tolls arising on such road, and any such money should remain unpaid and unsatisfied at the time of the passing of the Act now in recital, such trustees or commissioners should, out of the tolls of such road, after payment thereof of the interest on any monies owing on the security of the said tolls, and such sums as should be required to be set apart under the said hereinbefore recited enactment of the said Act of the twelfth and thirteenth years of her Majesty, and all such other liabilities and expenses as therein mentioned, set apart a sum of five pounds per centum per annum on the amount of principal money so borrowed, charged, or secured before the passing of the said Act, and remaining unpaid and unsatisfied as aforesaid, or such lesser sum as might from time to time remain after such payment as aforesaid; and when and so often as the sum so set apart should amount to the sum of two hundred pounds, the said trustees or commissioners should apply such sum in or towards payment of the monies so borrowed, charged, or secured as aforesaid, and then remaining unpaid, in manner provided by the said Act of the twelfth and thirteenth years of her Majesty with respect to the application of money arising from the sums set apart as therein mentioned in or towards the discharge of monies borrowed, charged, or secured after the passing of such last-mentioned Act:

BORROWING
—SINKING
FUND.
— —

13 & 14 Vict.
c. 79.

**BORROWING
—SINKING
FUND.**

—
Sinking fund may be applied in payment of debts before it amounts to 200*l.*, or, with consent of Secretary of State, the application may be postponed till it amounts to a greater sum.

It shall be lawful for the trustees or commissioners of any turnpike road, where it appears to them convenient so to do, to apply any money arising from sums set apart as required by the said recited Acts or either of them in or towards the discharge of debts according to the directions of such Acts respectively, although such monies may not amount to two hundred pounds, or, with the consent in writing of one of her Majesty's principal secretaries of state under his hand, to postpone such application of such monies until the same amount to any greater sum than two hundred pounds, which the said trustees or commissioners, with such consent as aforesaid, may determine.

Trustees may apply surplus in payment of debts in manner provided by recited Acts with respect to sinking funds.

IV. It shall be lawful for the trustees or commissioners of any turnpike road, where they have any surplus monies applicable towards the discharge of principal money secured on the tolls of such road beyond such sums as under the said recited Acts or either of them, or under any local Act, they are required to set apart or apply for that purpose, to apply, if they think fit, such surplus monies in or towards payment of the principal money secured as aforesaid in manner provided by the said first-mentioned Act with respect to the application of monies arising from the sums set apart as therein mentioned in or towards the discharge of monies borrowed, charged, or secured after the passing of that Act.

Power to executors, &c., to consent.

V. All executors, administrators, guardians, trustees, and all committees of the estates of idiots and lunatics, who as such are for the time being entitled to any money charged or secured on the tolls or revenues of any turnpike road, may offer to accept and may accept under the said recited Acts or either of them, or this Act, or any local Act, such composition in respect of such money or any part thereof as they in their discretion may deem expedient, and may in their discretion accept any reduced or lower rate of interest in respect of such money or any part thereof, and also consent to or concur in the extinction in whole or in part of any arrears of interest payable in respect of such money or

any part thereof, as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof; and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.

EXEMPTION
FROM TOLLS.

VI. And whereas by the Act of the session holden in the fourteenth and fifteenth years of her Majesty, chapter thirty-eight, it was enacted, that the words "implements of husbandry" in section thirty-six of chapter one hundred and twenty-six of the statute of the third year of King George the Fourth should be deemed to include "threshing machines:" And whereas section thirty-six of such last-mentioned Act was referred to by mistake instead of section thirty-two of such Act:

Erroneous
reference in
14 & 15 Vict.
c. 38, to sect.
36 of 3 G. 4,
c. 126, in-
stead of sect.
32, corrected.

The said enactment of the said Act of the fourteenth and fifteenth years of her Majesty shall be read and construed as if section thirty-two of the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, had been mentioned instead of section thirty-six of such Act.

VII. In citing this Act in other Acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Annual Turnpike Acts Continuance Act, 1853."

Short title.

VIII. This Act shall not apply to Ireland.

Extent of
Act.

17 VICT. CAP. 4, s. 78.

An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.

[23rd March, 1854.]

LXXVIII. All her Majesty's officers and soldiers, being in proper staff or regimental or military uniform, dress or undress, and their horses, (but not when passing in any hired or private vehicle,) and all recruits, marching by route, and all prisoners under military escort, and all enrolled pensioners in uniform when called out

Tolls.

EXEMPTION
FROM TOLLS.

for training or in aid of the civil power, and all carriages and horses belonging to her Majesty or employed in her service under the provisions of this Act, or in any of her Majesty's colonies, when conveying persons or baggage going thereto or returning therefrom, shall be exempted from payment of any duties and tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing place, or passing turnpike or other roads or bridges, otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any Act or ordinance, order or direction of any colonial legislature or other authority in any of her Majesty's colonies; provided that nothing herein contained shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls, in like manner as other boats, barges, and vessels are liable thereto, except when employed in cases of emergency as hereinbefore enacted.

17 VICT. CAP. 6, s. 76.

An Act for the Regulation of her Majesty's Royal Marine Forces while on Shore.

[23rd March, 1854.]

Exemption
from tolls.

LXXVI. All officers and marines, being in proper uniform, dress or undress, and their horses, (but not when passing in any private or hired vehicle,) and all recruits marching by route, and all prisoners under military escort, and all carriages and horses belonging to her Majesty or employed in her service under the provisions of this Act, or in any of her Majesty's colonies, when employed in conveying persons or baggage going thereto or returning therefrom, shall be exempted from the payment of any duties and tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing place, or passing turnpike or other roads or bridges, otherwise demandable by virtue of any Act already passed or hereafter to be passed, or by virtue of any Act or ordinance, order or direction, of any colonial

legislature or other authority in any of her Majesty's colonies; and if any toll collector shall demand or receive toll from any marine officer or marine who shall be in proper uniform, dress or undress, or for their horses, and who by this Act is exempted from payment thereof, or from any recruits marching by route, or from any prisoners under military escort, or for any carriages or horses belonging to her Majesty or employed in her service under the provisions of this Act, when conveying persons or baggage, or returning therefrom, every such collector shall for every such offence be liable to a penalty not exceeding five pounds; provided that nothing herein contained shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels are liable thereto, except when employed in cases of emergency as herein mentioned; and that when any officers or marines on service shall have occasion in the march by route to pass regular ferries in Scotland, the officer commanding shall be at liberty to pass over with his marines as passengers, paying for himself and each marine one half only of the ordinary rate payable by passengers, or he shall be at liberty to hire the ferry boat for himself and his party, debarring all others for that time, and shall in such case pay only half the ordinary rate for such boat.

EXEMPTION
FROM TOLLS.

APPENDIX I

ADDITIONAL FORMS (a).

No. 37.

PRIVATE
BILLS.

NOTICE OF AN INTENDED APPLICATION TO PARLIAMENT FOR A ROAD BILL (b).

NOTICE is hereby given, that application is intended to be made to Parliament, in the next session, for an Act "For making and maintaining a Turnpike Road, to commence at or near to a certain place called —, in the parish of —, and to pass from thence over —, in the parish of — aforesaid, through — to —, in the parish of —, and from thence through or near the town or village of — to —, and to terminate at or near to a certain place called —, in the town of —, all in the county of —."

A. B., Solicitor for the bill.

If an amended Act is to be applied for, instead of the words within inverted commas, say, "For [continuing the term and for] altering, amending, and enlarging the powers and provisions of an Act passed in the — year of the

(a) The forms in this Appendix are not sanctioned by the Acts, like those in the Schedules, ante, p. 138; but by 4 G. 4, c. 95, s. 87, &c., no proceeding is to be vacated or quashed for want of form. The numbering is continued from the highest number of the forms provided by the Acts, for the purpose of reference. A list of all the forms in this Appendix, as well as of those given by the Acts, will be found at the commencement of this work.

(b) This notice, and the subjoined petition, were produced in evidence before the select committee of the House of Lords, and are published in an Appendix to their Report.

PRIVATE
BILLS.
—

reign of his Majesty King George the —, intituled ‘An Act, &c.’ [*insert the title of the Act,*] and also of an Act, &c.; [*if partial, say, ‘so far as the said Act relates to the said road from — to —,’*] and which said road lies in and passes through the townships, hamlets, districts, or places of —, all in the county of —.” *If a branch road or improvements is or are required, say,* “And it is intended to make a branch turnpike road, from the road described in the said Act, to commence at or near to a place called —, in the township of —, and to pass through the several townships, &c., and to terminate at —, all in the said county of —.” [“And it is further intended to make turnpike a certain highway leading from — in — to the said turnpike road, at or near —, and passing through —, &c.”]; [and to widen, divert, and improve (the said branch road, or the said highway, and) certain parts of the said turnpike roads]; and for that purpose [*or those purposes*] to take certain messuages, buildings, gardens, lands, and premises, lying within the [said] several parishes, townships, hamlets, and places of —, or some or one of them]: [And it is likewise intended to abandon and discontinue a certain part of the said road, leading from — to — aforesaid].” *If an alteration in the tolls is contemplated, say,* “And it is also intended to obtain an increase or alteration of the existing tolls arising on the said road [and to discontinue the exemption on —.”]

No. 38.

PETITION FOR A ROAD BILL.

To the Honourable the Commons of the United Kingdom of Great Britian and Ireland, in Parliament assembled. Petition.

The humble petition of the several persons whose names are hereunto subscribed, being (c) — in the parish of — in the county of —

Sheweth,

That the making and maintaining of a turnpike road,

(c) In this blank say, “Owners of estates and occupiers of lands in or near the parish, &c.,” or as the case may be. If a road is already in existence, say, “being owners and occupiers of lands in the vicinity of the road hereinafter mentioned;” or, if an Act is in existence, say, “being trustees for executing the Act hereinafter mentioned.”

PRIVATE
BILLS
—

to commence at — (insert from the notice), would be of great benefit and advantage to the inhabitants of — and the adjacent country, and also to the public at large; but the same cannot be carried into execution without the aid and authority of Parliament.

If the intended bill is for widening a road, instead of this clause, say, "That the road leading from — &c. is very much out of repair, narrow, and inconvenient for passengers and carriages; and that it would be of great benefit to the public if the said road were properly amended, widened, altered, improved, and kept in repair; but the same cannot be done without &c.]

For an amended Act, instead of this Clause, insert such of the following as are applicable.

That an Act was passed in the — year of the reign of his — Majesty King George the —, intituled "An Act," &c. [and another Act was passed, &c.]

That considerable [progress has been made in the execution of the said Act, and large] sums of money [have been borrowed by the trustees, and] are due and owing on the credit of the tolls authorised to be taken by the said Act on the said road, which cannot be paid off, nor can the said road be effectually repaired and kept in repair, unless the term of the said Act be continued, its powers and provisions enlarged, additional powers granted, and the tolls increased.

[That the making and maintaining of a new branch of road, to commence at &c. (as in the notice), would be of great benefit and convenience to the persons residing in the neighbourhood, and of several adjacent towns; and would also be of great public utility.]

[That the present highway, leading &c., is much out of repair, narrow, and incommodious for passengers and vehicles; and that if the said highway were put under the care of the said trustees, it would be of great benefit to the public.]

[That, when the said [new branch of] road is completed, the road leading from — &c., will be of little or no public benefit, and it will therefore be expedient to abandon the same as a turnpike road.]

[That the powers and provisions of the said Acts have been found, in many respects, defective and insufficient for the purposes thereby intended; and it would greatly facilitate the execution of the said Act [or Acts] if the same were repealed [excepting such of the powers and provisions thereof as it shall be deemed expedient to continue], and

further additional powers were granted in lieu thereof [or added to and consolidated in one Act.]

Your petitioners, therefore, humbly pray, that leave may be given to bring in a bill (*d*) “for effecting the purpose aforesaid,” in such manner, by such ways and means, and under such regulations and restrictions as to this Honourable House shall seem meet.

No. 39.

DECLARATION OF TRUSTEES’ QUALIFICATION AND OFFICE.

[See 3 Geo. 4, c. 126, s. 62; 4 Geo. 4, c. 95, s. 32; 5 & 6 Will. 4, c. 62, s. 20.]

I, A. B., do solemnly and sincerely declare, that I truly and bonâ fide am, in my own right [*or*, in the right of my wife], in the actual possession and enjoyment of [*or*, in the receipt of rents and profits issuing out of] freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of one hundred pounds above reprises, [*or*, am heir apparent of —, who to the best of my knowledge is seised of freehold or copyhold lands, tenements, or hereditaments, of the clear yearly value of two hundred pounds above reprises,] [*or*, that I am possessed of a personal estate of ten thousand pounds, clear of all debts and incumbrances, *as the case may be*,] and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of his present Majesty, intituled “An Act to repeal an Act of the present session of Parliament, intituled ‘An Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extrajudicial Oaths and Affidavits; and to make other Provisions for the Abolition of unnecessary Oaths.’” Declaration.

I, A. B., do solemnly and sincerely declare, that I will truly and impartially, according to the best of my judgment, execute and perform the several powers, authorities, and trusts reposed in me as a trustee [*or*, commissioner] by virtue

(*d*) Or, instead of the words between inverted commas, say, “to continue the term and enlarge the powers and provisions of the said Acts.”

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of an Act passed in the third year of the reign of his Majesty King George the Fourth, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England;" and also an Act passed in the fourth year of the reign of his said Majesty, intituled "An Act to explain and amend an Act, passed in the third year of the reign of his present Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England;" and also an Act passed in the — year of the reign of his Majesty —, intituled [*here set forth the title of the Act under which such trustee or commissioner shall claim to act*]; and that I make this solemn declaration, &c., [*concluding as above.*]

No. 40.

APPOINTMENT OF AN OFFICER (e).

[See 4 Geo. 4, c. 95, s. 43.]

Appointment
of officers.

At a meeting of the trustees [*or commissioners*] of the turnpike roads, under an Act passed in the — year of the reign of his Majesty King George the — "For [*state the title of the Act*]," held at —, the — day of —.

IN pursuance and exercise of the power and authority given to or vested in us, in and by the above-mentioned Act, and also in and by an Act passed in the third year of the reign of his Majesty King George the Fourth, "For regulating Turnpike Roads;" and another Act passed in the fourth year of his said late Majesty's reign, intituled "An Act to explain and amend an Act passed in the third year of the reign of his present Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," and of all other power and powers, authority and authorities, in any-wise enabling us in this behalf: We, whose names are here-

(e) The Act requires the appointment to be in writing, and every appointment in writing to any office or employment, where the salary shall not amount to 50*l.*, requires a stamp of 2*l.*; and when more, a greater stamp in proportion to the amount of the salary. See 55 G. 3, c. 184, Sched. tit. "Grant;" *Rex v. Lew*, 8 B. & C. 635, 3 Man. & R. 369.

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unto subscribed, being the trustees [*or commissioners*] of the said turnpike road, have nominated and appointed, and do hereby nominate and appoint A.B., of [*&c.*] to be collector of the tolls arising on [*or clerk to the trustees or commissioners,*] [*or surveyor, &c. of*] the said turnpike road for — year, [*or during the pleasure of the trustees or commissioners*] of the said turnpike road for the time being, at the yearly salary of — for his care, attendance, labour, and services therein, the same to be allowed and paid quarterly, [*or as the case may be*], out of the monies arising on the said turnpike road; with full power and authority for him the said A. B. to collect, seize, and distrain for, recover and receive the tolls arising and payable at — bar on the said turnpike road, and at the weighing engine or side bar at — aforesaid, [*or as the case may be*], and to do, execute, and perform all and every act, matter, and thing, acts, matters, and things whatsoever, appertaining or incident to the said office of collector, [*clerk*], [*surveyor, &c.*] under and according to the provisions, limitations, and directions of the said respective Acts or either of them, or any other Act or Acts already passed, or hereafter to be passed, relating to the said turnpike road; and also subject and according to such orders, rules, and directions as he the said A. B. hath received, or shall from time to time receive from the trustees [*or commissioners*] of the said turnpike road for the time being.

Given under our hands, the day and year, and at the place, first above written. C. D., &c. &c.

If security is to be given for the faithful discharge of the office, see the Form of Bond, p. 149.

If a temporary collector or receiver only is to be appointed, in case of death, &c., until the next meeting of the trustees or commissioners of the said road, such appointment may be made by any two or more trustees or commissioners, although not assembled at a meeting. See p. 190.

No. 41.

SUMMONS TO COMPEL AN OFFICER TO ACCOUNT.

[*See 4 Geo. 4, c. 95, s. 47; 9 Geo. 4, c. 77, s. 14.*]

County of — }
to wit. } To A. B., of —.

WHEREAS complaint hath been made to and before me C. D. one of his Majesty's justices of the peace for the said [county, &c.] by [E. F.] [*surveyor, &c.*] on behalf of the

Summons to
attend jus-
tice.

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— —

trustees [*or* commissioners] of the turnpike road [*describing it*] appointed by or acting under an Act passed in the ——— year of the reign of his Majesty, intituled “An Act, &c.” [*set forth the title of the local Act*], and also an Act passed in the third year of the reign of his Majesty King George the Fourth, intituled “An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England;” and also an Act passed in the fourth year of the reign of his said late Majesty, intituled “An Act, &c, [*set forth the title of 4 Geo. 4, c. 55*], that you A. B., being one of the officers appointed by the trustees [*or* commissioners] of the said turnpike road [although thereunto required by the said trustees *or* commissioners] have refused and neglected to produce and deliver to such trustees [*or* commissioners], and to such person, and within such time as they the said trustees [*or* commissioners] appointed and limited for that purpose, and that you still refuse and neglect to produce and deliver to them, and to such person as last aforesaid, or to any or either of them, true, exact, and perfect accounts in writing, under your hand, of all monies which you have received to the time when such accounts were required to be delivered as aforesaid, by virtue of the said Acts, or any or either of them, and how much thereof has been paid or disbursed, and for what purposes, together with the proper vouchers for such payments, [*or* have refused and neglected to pay the money due on a certain account (*or* accounts) produced and delivered by you to such trustees (*or* commissioners) of all monies, &c. *as above*]. [*Or, that you, A. B. (being, &c. as above) did refuse and neglect to deliver up to the said trustees (*or* commissioners) and to such persons as they did appoint for that purpose, within ten days after being thereunto required by the said trustees (*or* commissioners), all the books, (papers,) (*or* writings) in your custody or power relating to the execution of the said Acts, or any or either of them.*] These are therefore to require you personally to appear before me, at ——— in the said [county], on the ——— day of ——— next, at the hour of ——— in the ——— noon, to answer to the said complaint made by the said E. F. on behalf of the said trustees [*or* commissioners], the said E. F. being likewise directed to be then and there present to make good the same. Herein fail not.

Given under my hand and seal this ——— day of ———.

C. D. (L. s.)

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AND
OFFICERS.
— —

No. 42.

WARRANT TO DISTRAIN FOR THE MONEY FOUND DUE.

[See 4 Geo. 4, c. 95, s. 47.; 9 Geo. 4, c. 77, s. 14.]

County of ——— } To the [constable, headborough *or* tith- Warrant of
to wit } ingman] of ——— in the said county. distress.

WHEREAS complaint having been made to and before me, C. D., one &c., by E. F. &c., that A. B., of &c., [*set forth the complaint as in the summons*], I the said justice did thereupon, by warrant under my hand, duly summon the said A. B. to appear before me at ——— this day, and the said A. B. appeared before me at such time and place, pursuant to the said summons, [*or, but it is duly proved and shewn to me that the said A. B. was and is not to be found*], whereupon I the said justice did proceed to hear the matter of such complaint in a summary way, [and the said A. B. having produced a certain account or accounts of or concerning the matters aforesaid, I did proceed, according to the directions of the statute in that case provided, to settle the said account [*or accounts*]: and the said A. B., having heard the said complaint, acknowledged and voluntarily confessed the same to be true]. And it manifestly appearing to me upon such confession of the said A. B. against whom such complaint was so made as aforesaid [*or, by the oath (or oaths) of one witness, [or ——— witnesses]*] [and upon the inspection of the said account (*or accounts*) so produced as aforesaid] that the sum of ———, being the whole [*or part*] of the money which has been collected or received by the said A. B. in the behalf and on the account aforesaid, is in the hands of the said A. B. and hath been by him refused and neglected to be paid as aforesaid, contrary to the said last-mentioned statute: These are therefore in his Majesty's name to command you to levy the said sum of ——— by distress of the goods and chattels of him the said A. B.: and if, within four days next after such distress by you taken, the said sum, and the charges of distraining and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay the said sum of ——— to the said trustees [*or commissioners*], or such person or persons as they shall for that purpose appoint, according to the directions of the said statute made in the fourth year of the reign aforesaid, returning the overplus on demand to him the said A. B. (the reasonable charges of distraining and selling the said

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distress being first deducted); and if no goods and chattels of the said A. B. can be found sufficient to answer and satisfy the said money and the charges of distraining and selling the same, that then you certify the same to me, together with this warrant.

Given under my hand and seal, the — day of —,
C. D. (L. S.)

For the form of the constable's return, if no distress can be found, see p. 153.

No. 43.

COMMITMENT FOR WANT OF DISTRESS.

[See 4 Geo. 4, c. 95, s. 47; 9 Geo. 4, c. 77, s. 14.]

Commit-
ment.

County of — } To the [constable] of — in the said
to wit. } county, and to the keeper of the com-
mon gaol [or the house of correction], at — in the said
county.

WHEREAS complaint &c. [*state the complaint and conviction, as in the summons and warrant of distress*]; and whereas, on the — day of — in the year aforesaid, I did issue my warrant to the [constable] of — to levy the said sum of — by distress and sale of the goods and chattels of him the said A. B. according to the directions of the said last-mentioned statute. And whereas it duly appears to me upon the oath of the said [constable] that the said [constable] hath used his best endeavours to levy the said sum of — on the goods and chattels of the said A. B. as aforesaid, but that no goods and chattels of the said A. B. can be found sufficient to answer and satisfy the said money and the charges of distraining and selling the same, [*or And whereas the said A. B. hath not appeared before me the said justice at the time and place by me appointed for that purpose, pursuant to the said summons, and there is no sufficient reason assigned for such non-appearance*], [*or, And whereas the said A. B. hath appeared before me the said justice at the time and place by me appointed for that purpose, but hath then and there refused and neglected, and doth refuse and neglect, to give and deliver to me the said justice an account or accounts of all receipts and payments as aforesaid, [or to produce and deliver to me the said justice the several vouchers and receipts relating to such accounts respectively]; [or, the books, accounts, papers, and writings in his custody or power, relating to the execution of the said Act of the —*

year aforesaid, for making or repairing the said turnpike road, or the said Act of the third, or the said Act of the fourth years of the reign of his said late Majesty], contrary to the statute in that case made and provided: These are therefore to command you the said [constable] of ——— aforesaid, to apprehend the said A. B., and him safely to convey to the common gaol [or house of correction], at ——— in the said county, and there deliver him to the keeper thereof, together with this precept: and I do also command you the said keeper to receive and keep in your custody the said A. B. without bail or mainprize, until he shall have accounted for and paid the full amount of the said money received by him [or in his hands], as aforesaid, or compounded with the said trustees [or commissioners], and paid such composition in such manner as the said trustees [or commissioners] shall appoint, [or, until he shall have delivered up such books, papers, and writings as aforesaid, or made satisfaction thereof to the said trustees] [or commissioners]; and for so doing this shall be your sufficient warrant: provided that the said A. B. shall not for the offence, or on the account aforesaid, be detained in prison for a longer space of time than [six] calendar months.

Given under my hand and seal, the ——— day of ——— in the year of our Lord one thousand eight hundred and ———.

C. D. (L. S.)

ACQUIRING
LANDS, &c.

No. 44.

TRUSTEES' ORDER FOR PURCHASING LAND, TO BE ENTERED IN THE BOOKS OF PROCEEDINGS.

[See 3 Geo. 4, c. 126, s. 84 (f).]

In consequence of various complaints which have repeatedly been made to the trustees, of the dangerous part of the road, by reason of the two sharp turns or angles in the village of ———, the trustees present deem it necessary, and have unanimously resolved, and do hereby unanimously resolve, to divert and alter the line of the said road through the aforesaid village, so as to avoid such turns or angles.

Trustees' order.

It is therefore resolved and ordered, that the several

(f) See various forms relating to acquiring land from an adverse owner, set out at greater length in Chitty's Burn's Justice.

ACQUIRING
LANDS, &c.

contracts already entered into by Mr. P., the surveyor of the said road, on behalf of the said trustees, with Mr. J. M. and others, for the purchase of any lands or tenements through which the said road is intended to be diverted or altered, be, and the same are hereby confirmed and ordered, and directed to be carried into effect.

And it is further resolved, that the said surveyor be, and he is hereby ordered and empowered to contract with the remainder of the parties interested in the property which will be affected by such intended diversion or alteration, for the purchase of the lands or tenements through which the said intended road will pass, and upon such terms and conditions as he may judge expedient to accomplish the object of the said diversion and alteration; and at this meeting it was also resolved and determined, that notice of such intended diversion and alteration of the said road be given to G. P., esquire, as the owner, and to W. E. and S. B. as the tenants or occupiers respectively, of four several slips or pieces of land through which the said road is intended to be diverted and pass, of the intention of the said trustees to make such intended diversion and alteration, and which notices have been accordingly this day signed by the major part of the trustees now present.

And it is further ordered, that the surveyor be, and he is hereby authorised to contract and agree with Mr. P. and the said W. E. and S. B. for the purchase of the said four slips or pieces of land, and for the recompense and satisfaction they may respectively be entitled to in that behalf, at any sum not exceeding after the rate of — per acre for such part of the said land wanted for the purpose aforesaid, called — Close; and any sum not exceeding after the rate of — per acre for the remaining part of the said land, as he the said surveyor may judge necessary, and also that he make such stipulations and agreements as to the fence adjoining such land as he may think proper.

And it is further resolved, that in case Mr. P. and the said W. E. and S. B. shall refuse or neglect to treat and agree for the sale of the said land, and for the said recompense and satisfaction, such further proceedings be adopted and resorted to as are directed in such cases by the general laws relating to turnpike roads.

(Signed by the chairman of meeting.)

No. 45.

NOTICE OF INTENTION TO PURCHASE LAND FOR THE USE
OF A TURNPIKE ROAD.

[See 3 Geo. 4, c. 126, s. 84.]

WE do hereby give you notice, that, at a meeting of the trustees acting in the execution of an Act of Parliament passed in the — year of the reign of King George the Fourth, intituled “An Act,” &c. [*the local Act or Acts*], holden at — in the said county, on the — day of — last, it was decreed and determined by the said trustees to be necessary to purchase, and they resolved that they would purchase, and ordered to be purchased, a slip or piece of land, &c. [*state the situation, dimensions, and occupancy of the land to be purchased very particularly, as in a conveyance*], of which said slip or piece of land you are the owner [*or tenant, &c.*], for the purpose of diverting, altering, and improving the said road from — to — aforesaid, and using the same for that purpose, according to the provisions of the said Act of Parliament, and of the general Acts relating to turnpike roads, so far as such last-mentioned Acts relate to the said roads in the said first-mentioned Act of Parliament specified; and we do hereby give you notice and require you to treat, contract, and agree with the said trustees for the purchase by them of the said slip or piece of land for the purpose aforesaid, and for the value and recompense you may be entitled to from them in that behalf, and for the loss or damage you may sustain by reason of the said trustees purchasing or using the said slip or piece of land, for the purpose aforesaid; and we further give you notice, that in case you do, for the space of thirty days next after the receipt of this notice, neglect or refuse to treat, or, by reason of absence, shall be prevented from treating, or do not agree in the premises with the said trustees, then that the said trustees will cause such value and recompense, loss or damage, to be inquired into and ascertained by a jury of twelve indifferent men of the county, riding, or place wherein such slip or piece of land lies, and will proceed thereupon according to the provisions of the said several Acts of Parliament before mentioned or referred to, and the laws now in force in that behalf.

Dated this — day of —, 18—.

A. B., C. D., E. F., G. H., &c.

Trustees of the above-mentioned turnpike roads acting in the execution of the said Acts, and being the major part of the trustees assembled at the said meeting.

ACQUIRING
LANDS, &c.

No. 46.

PRECEPT TO SUMMON A JURY TO ASSESS DAMAGES.

[See 3 Geo. 4, c. 126, s. 85.]

Precept for
jury.

WHEREAS, at a meeting &c. [*state the resolution to purchase, as in Notice, No. 45.*] And whereas on the said — day of — last, J. G., &c. gentlemen, six of the trustees acting in the execution of the said Act of Parliament and other the Acts of Parliament therein mentioned and now in force, so far as they relate to the said roads, and being the major part of the said trustees assembled at the said meeting, did give the said G. P., and the said W. E. and S. B., notice in writing of the said intention and determination of the said trustees, and did give them notice and require them respectively to treat, contract, and agree, &c. [*as in the Notice, No. 45.*] And whereas the said G. P., and the said W. E. and S. B., did not nor did either of them, within thirty days next after such notice, or at any other time, treat or agree with the said trustees, according to the said notice to them: and whereas the said slip or piece of land, required by the said trustees, is situate within the distance of one hundred yards from the line or course of the said road from — to —, and no dwelling house or other building is erected on any part thereof, and no part of such slip or piece of land is a garden, yard, or paddock, or a park, planted walk, or avenue to a house, or inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees: Now you the said —, as sheriff of the said county, are hereby required and commanded forthwith to impanel, summon, and return an indifferent jury of twenty-four men of the county of — qualified to serve upon juries, to be and appear before the trustees of the said turnpike road, at the inn or premises known by the sign of —, and kept by —, in — in the said county, between the hours of — and — in the morning of the — day of — next, in order that a jury of twelve men may be then and there chosen and sworn, to inquire into and ascertain the value of the said slip or piece of land so required by the said trustees as aforesaid, and the recompense to which the said G. P., as such owner and person interested, and the said W. E. and S. B. respectively, as such tenants or occupiers, may be entitled, and the damage and loss which may be sustained by them respectively, in consequence of the said trustees requiring and taking such slip or piece of

land for the purpose aforesaid, in pursuance of the said Acts of Parliament. ACQUIRING
LANDS, &c.
— —

Given under our hands and seals this — day of —, 18—.

_____ (L. S.)	_____ (L. S.)
_____ (L. S.)	_____ (L. S.)
_____ (L. S.)	_____ (L. S.)

To —, Esquire,
Sheriff of the County
of —.

No. 47.

SUMMONS TO ATTEND BEFORE THE JURY.

[See 3 Geo. 4, c. 126, s. 85.]

THE trustees acting in the execution of an Act of Parliament passed in the — year of the reign of King George the Fourth, intituled "An Act," &c. [*the local Act or Acts*], do hereby summon and require you to be and appear before a jury of the county of — at the house of —, known by the sign of the —, at — in the said county, on — the — day of —, 18—, at — o'clock in the — noon precisely, to give evidence on the part of the said trustees touching the matter to be then and there inquired of by the said jury. And the said trustees require you then and there to produce and give in evidence before them and the said jury all title deeds, leases, books, papers, and writings in your custody or power relating to a certain slip or parcel of land situate, &c. [*as in No. 45*], and to the ownership and occupation thereof respectively, and the estate and interest of any person or persons whomsoever therein or thereto. And herein you are not to fail upon any pretence whatsoever, or you will be fined according to the directions of the Acts of Parliament in that case made and provided.

Summons for
witnesses.

Dated this — day of —, 18—.

A. B., C. D., E. F.,
Trustees of the above-mentioned
turnpike road.

No. 48.

INQUISITION.

[See 3 Geo. 4, c. 126, s. 85.]

— } AN inquisition indented, taken at the house of Inquisition.
to wit. } —, known by the name or sign of the —,
in the county of —, the — day of —, in the year of

ACQUIRING
LANDS, &c.
—

our Lord 18—, before the trustees acting in the execution of an Act of Parliament in the — year of the reign of King George the Fourth, intituled “An Act, &c.,” [*the local Act or Acts*] by virtue of the warrant or precept under the hands and seals of J. G., W. F., J. N., W. P., W. H., J. B., and S. T., being seven of the trustees appointed and acting under and by virtue and in execution of the said Act, and of the general Acts relating to turnpike roads, directed to the sheriff of the county of —, and to this inquisition annexed, on the oaths of W. C., J. C., W. H., J. G., H. G., G. B., C. B., C. F., W. P., R. P., G. G., and N. G., twelve indifferent men of the said county, qualified to serve upon juries, who being duly summoned and returned, and sworn to inquire into and ascertain touching the matters in the said annexed warrant or precept mentioned, do, upon their oath, say, That at a meeting of the trustees acting in the execution of the said Act, holden at — &c. [*state the determination to purchase, as in No. 45*], and that, on the — day of — last, J. G. &c. [*state the notice to treat, and refusal, &c., as in No. 46.*] And the jury aforesaid upon their oaths find, after view had and evidence heard, that the value of the said slip or parcel of land so required by the said trustees for the purpose aforesaid, in pursuance of the said Acts of Parliament, and the recompense to the said G. P., as the owner of or person interested in the same as aforesaid, for the damage and loss he has sustained or may sustain by reason of the said trustees requiring and taking such slip or parcel of land as aforesaid, amount to the sum of £—; and that, by reason of the said trustees requiring and taking the said slip or parcel of land for the purposes aforesaid, the said W. E., as tenant and occupier of the said slip or parcel of land, will sustain damage and loss to the amount of —. In witness whereof, as well J. G., &c., seven of the trustees appointed and acting under and by virtue of the said first-mentioned Act of Parliament, as J. P., Esq., sheriff of the said county, and the jurors aforesaid, have hereunto respectively set their hands and seals on the day and year first above written.

No. 49.

ORDER FOR GIVING UP PART OF AN OLD ROAD IN EX-
CHANGE FOR LAND FOR MAKING A NEW ROAD.

[See 3 G. 4, c. 126, s. 84, &c.]

The undersigned trustees hereby order, that so much of the old turnpike road leading from P. to S., as lies between the points &c., commencing &c., and extending &c., and situate in the parish of P. aforesaid, shall be stopped up and wholly discontinued to be used as a public highway, the same having, in the judgment of the said trustees, become useless and unnecessary; and that the said old turnpike road so ordered to be stopped up, shall be given up to and become the sole and absolute property of F. A., of &c., and C. P., of &c., as devisees, &c., pursuant to the agreement in that behalf with the said devisees, and in exchange for the land given up by them, *and intended to be forthwith conveyed to the said trustees (h)*, and now formed into and constituting the new road as aforesaid, and to be henceforth used as and for a turnpike road, containing in length, &c., and also situate in the parish of P. aforesaid, together with the piece of land also given up by the said devisees to the said trustees, and added to the said turnpike road, containing &c., and in the said parish of P. aforesaid. As witness, &c.

Order for ex-
changing
land.

(h) This Form was sanctioned by the Court in *Allnutt v. Pott*, 1 B. & Ad. 302, 3 Man. & R. 439; and according to the decision in that case, it would appear that no conveyance of land to trustees for the purposes of the road is necessary under 3 G. 4, c. 126, s. 86, unless the persons with whom the commissioners treat are incapacitated from agreeing at common law, or are acting in trust for others. In all other cases (and it is understood that this is the usual practice) an agreement, with a receipt for the purchase money, and an entry in the books of the trustees, is deemed sufficient. A Form of Conveyance from an incapacitated person to commissioners under an Act of Parliament will be found in Newnham's Conveyancer, Vol. ii. p. 658.

REPAIRS.

No. 50.

NOTICE OF INTENTION TO TAKE MATERIALS OUT OF
INCLOSED LANDS.

[See 3 G. 4, c. 126, s. 97.]

Notice to
shew cause
why mate-
rials should
not be taken.

I, A. B., surveyor of the turnpike road [*describing it*], do hereby give you notice, and require you to appear before E. F. and G. H., esquires, two of his Majesty's justices of the peace acting in and for the county of &c., at —, on — the — day of — next, to shew cause why materials for making [*or repairing*] the said turnpike road shall not be had and taken from and out of certain inclosed land, [*or grounds and premises,*] situate at — in the county of —, and called — Close, of which you are the owner and occupier respectively, that is to say, from and out of the north-east corner of the said land, adjoining to [*or as the case may be*], according to the directions of an Act passed in the third year of the reign of his Majesty King George the Fourth, For regulating Turnpike Roads.

Dated this — day of —, 18—

A. B.

No. 51.

SUMMONS TO SETTLE DIFFERENCES RESPECTING MATERIALS.

[See 3 G. 4, c. 126, s. 97, &c.]

Notice as to
materials.

I, A. B., surveyor of the turnpike road [*describing it*], do hereby give you notice and require you to appear before E. F. and G. H., esquires, two of his Majesty's justices of the peace acting in and for the [county] of &c., at —, on — the — day of — next, when and where the said justices will hear, settle, and determine the matter in difference between you and me, concerning the materials taken (or intended to be taken) and carried away from and out of certain inclosed lands, situate at &c., and also concerning the payment and satisfaction for such materials, and the damages done or to be done to you in respect thereof, and the costs attending the hearing and determining the same.

Dated this — day of — 18—.

A. B.

N. B. This notice must be given two days before the hearing.

No. 52.

AUTHORITY TO GET MATERIALS OUT OF INCLOSED LANDS.

[See 3 G. 4, c. 126, ss. 97, 98.]

County of } WHEREAS it hath been made to appear unto Authority to
 ——— } us, J. P. and K. P., esquires, two of his get mate-
 rials.
 Majesty's justices of the peace for the said county, acting
 within the hundred of ———, upon the oath of A. S., sur-
 veyor of the turnpike road [*describing it*], and other proof
 upon oath, that notice in writing, signed by the said sur-
 veyor, hath been duly given to [*or left at the house (or last*
or usual place of abode) of] A. B., of ———, the owner [*or*
the known agent of the owner] [*or the occupier*] of certain
 lands and premises, situate at ———, being a parish [*hamlet*
or place] within the county and hundred aforesaid, and in
 which a part of the said turnpike road lies or is situate, [*or*
being an adjoining parish (hamlet, or place) to the said
turnpike road] (the said land and premises not being a
 garden, yard, park, paddock, planted walk or avenue to any
 house, or piece of ground planted and set apart as a nursery
 for trees) to appear before us to shew cause why materials
 for making or repairing the said turnpike road should not be
 had and taken out of and from the said lands and premises,
 according to the directions of an Act passed in the third year
 of the reign of his Majesty King George the Fourth, "For
 regulating Turnpike Roads." And whereas the said A. B.
 hath attended [*by G. H., his agent*], pursuant to such notice,
 but hath not shewn sufficient cause to the contrary, [*or*
hath neglected and refused to appear by himself (or her-
self) or his (or her) agent, pursuant to the said notice, the
service of which upon the said A. B. hath been duly proved
on oath]. We do, therefore, after hearing what has been
 alleged, and duly considering the premises, think it proper
 to order, and do hereby order and authorise the said A. S.,
 as such surveyor as aforesaid, to dig, get, gather, take, and
 carry away such materials for the purposes aforesaid out of
 and from the said lands and premises of [*or occupied by*]
 the said A. B., that is to say, from and out of the north-
 east corner of a certain field or close, called ———, adjoining
 to ——— [*or as the case may be*], at any time or times be-
 tween the ——— day of ——— and the ——— day of ———, ac-
 cording to the directions and subject to the restrictions of
 the said Act.

Given under our hands and seals, the ——— day of ———
 in the year of our Lord one thousand eight hundred
 and ———.

To A. S. and all others whom
 it may concern.

J. P. (L. S.)

K. P. (L. S.)

REPAIRS.

No. 53.

SUMMONS TO ATTEND A JUSTICE WHEN A TURNPIKE ROAD IS
OUT OF REPAIR.

[See 5 & 6 W. 4, c. 50, s. 94, and Schedule to that Act.]

Summons for non-repair. To Mr. E. F., surveyor or treasurer of the Turnpike Road hereinafter mentioned.

— } WHEREAS complaint and information, &c.
to wit. } [proceed as in No. 17, p. 150] that a certain
highway, situate in the said parish of —, and called —,
and leading from — to —, that is to say, so much of
the said highway as lies between — and —, containing
in length &c. —, is out of repair, and is not well and suf-
ficiently repaired and amended, contrary to the statute
in the fifth and sixth year (i) of King William the Fourth,
which hath imposed a forfeiture of any penalty not ex-
ceeding five pounds for the said offence; and that the said
highway so out of repair is a part of the turnpike road
leading from — to —, of which you are surveyor [or
treasurer]. These are therefore to require you personally
to appear before me [or the justices to be assembled at their
petty session (or special sessions for the highways), to be
holden at —, in the said county, &c.] on the — day of
— next, at the hour of — in the — noon, to answer
to the said complaint and information made by the said
A. B., who is likewise directed to be then and there pre-
sent to make good the same. Herein fail not.

Given under my hand this — day of —.

(i) These words are used in the Form prescribed by the Act 5 & 6 W. 4, c. 50, Schedule; otherwise it would be proper to say "the statute passed in the session of Parliament holden in the fifth and sixth years, &c." See *Rex v. Biers*, 1 A. & E. 331.

REPAIRS.
—

No. 54.

CONVICTION FOR NOT REPAIRING A TURNPIKE ROAD.

[See 5 & 6 W. 4, c. 50, s. 94, and Schedule to that Act.]

AT a special sessions for the highways, held at — in the division &c. of —, by justices of the peace for the said county, acting within the said division, &c., on the — day of —.

Conviction
for non-re-
pair.

— } BE it remembered, that, on the — day of
to wit. } —, in the year of our Lord —, at —
in the county aforesaid, A. B. came before us, — of her Majesty's justices of the peace for the said county, and informed us, that E. F., of —, on the — day of — now last part, at — in the said county, did [*set forth the fact in the manner described by the Act; see No. 53,*] whereupon the said E. F., after being duly summoned to answer the said charge, appeared before us —, on the — day of —, in the said county, and, having heard the charge alleged against him, declared that he was not guilty of the said offence. But we the said justices having, at —, on the — day of —, appointed a competent person, to wit, G. H., of —, to view the said highway, and report thereon to the justices assembled in special sessions at the time and place first above mentioned, which time was then and there fixed as the time at which the said E. F. was directed to attend as aforesaid [*or as the case may be*]. And it appearing to us the justices at this special sessions, on the day and place so fixed as last aforesaid, on the report of the said person so appointed by us to view as aforesaid, that the said highway is not in a state of thorough and effectual repair, and the said offence so charged against the said E. F., as such surveyor [*or treasurer*] of the said turnpike road, being fully proved, upon the oath of G. H., a credible witness, it manifestly appears to us, that he the said E. F., as such surveyor [*or treasurer*] as aforesaid, is guilty of the offence charged upon him in the said information: it is therefore considered and adjudged by us the said justices, that the said E. F., as such surveyor, [*or treasurer*] as aforesaid, be convicted, and we do hereby convict him of the offence aforesaid; and we do hereby declare and adjudge that he the said E. F., as such surveyor [*or treasurer*] as aforesaid, hath forfeited the sum of — of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided.—Given &c.

REPAIRS.

—
This is to be inserted when the party refuses to appear upon the summons.

This is to be inserted when the party accused confesses the charge.

[After the words, "being duly summoned to answer the said charge," insert did not appear before us pursuant to the said summons," or, "did neglect and refuse to make any defence against the said charge;" but the same being fully proved, &c., as before]

[After the words, "charge alleged against him," insert "acknowledged and voluntarily confessed the same to be true;" and it manifestly appears to us the said justices, &c. as above.]

No. 55.

ORDER TO REPAIR A TURNPIKE ROAD.

[See 5 & 6 Will. 4, c. 50, s. 94.]

Order to repair.

At a special sessions, &c. [as in No. 54.]

— } WHEREAS it has been duly proved to and
to wit. } before us the said justices, that a certain highway [describing it as before] is not in a state of thorough and effectual repair, and that the said highway so out of repair is part of the turnpike road leading from — to — &c.; and E. F. the surveyor (or treasurer) of the said turnpike road is this day convicted before us, two of her Majesty's justices of the peace in and for the said county, upon a sufficient report and due proof upon oath, for that the said highway is out of repair, and is not well and sufficiently repaired and amended; we do therefore order the said surveyor well and sufficiently to repair the said highway on or before the — day of —, which time we hereby limit and appoint for the repairing of the same.

Given under our hands the day and year above written.

J. P.
K. P.

No. 56.

ORDER OF JUSTICES TO PAY MONEY TOWARDS REPAIRING A HIGHWAY.

[See 5 & 6 Will. 4, c. 94.]

Order to pay money towards repairs.

At a special session, &c. [as in No. 54, p. 341.]

— } WHEREAS &c. [recite the first information,
to wit. } summons, conviction, and order, as above.] And
whereas complaint and information, &c. [as in No. 17] that default has been made by the said E. F. of such repairs of the said highway being effectually made within the time so

limited in the said order as aforesaid, contrary, &c. [*as in No. 53, p. 340,*] wherefore the said E. F., after being duly summoned to answer the said last-mentioned charge, appeared before us —, on the — day of —, in the said county, and, having heard the said last-mentioned charge alleged against him, declared that he was not guilty of the said last mentioned offence [*or as the case may be, see No. 54, p. 341*]; but the same being fully proved upon the oath of G. H., a credible witness, it manifestly appears to us, the said justices, that he the said E. F. has made default of such repairs of the said highway as last aforesaid, and is guilty of the offence charged upon him in the said last-mentioned information: It is therefore considered and adjudged by us, the said justices, that he the said E. F. is guilty of the offence charged upon him by the said last-mentioned information, and we do hereby convict him of the offence last aforesaid; and we do hereby declare and adjudge that he the said E. F. hath forfeited the sum of — of lawful money of Great Britain, for the offence and on the account last aforesaid, which said sum of money is equal in amount to the sum which we the said justices, on sufficient evidence this day produced before us, do judge requisite for repairing the said highway; and by this, our second order, we do order and direct that the said sum of — shall be forthwith paid by the said E. F. to L. M., a person hereby named and appointed by us for that purpose, the same to be recoverable in the same manner as any forfeiture is recoverable under the said Act in that case made, and when recovered to be applied to the repair of such highway as aforesaid, according to the form of the statute in that case made and provided.—Given, &c.

REPAIRS.
—

N.B. The forms of warrant of distress and commitment contained in the Schedule to the General Highway Act are nearly the same as Nos. 20, 22, ante, pp. 152, 153.

No. 57.

INDICTMENT FOR NOT REPAIRING A TURNPIKE ROAD.

[*See 5 & 6 Will. 4, c. 50, s. 95.*]

County of	} THE jurors of our Lady the Queen upon their	Indictment.
—		
to wit.	} oath present, that, on the — day of —	
last, there was, and from thence hitherto there		
has been and still is, a certain common and public Queen's		
highway, leading from A. in the county of S. towards and		

REPAIRS.

—

unto B. in the same county, [for all the liege subjects of our said Lady the Queen to go, return, pass, repass, ride, and labour on foot and on horseback, and with their horses, coaches, carts, and carriages, at their free will and pleasure,] and that a certain part of the same common and public highway, situate, lying, and being in the parish of O. in the county of S. aforesaid, extending from a certain place called — to a certain place called —, both within the said parish of O., containing in length divers, to wit, — feet, and in breadth divers, to wit, — feet, on the said — day of — last, was, and from thence until the day of the taking of this inquisition at the said parish of O., hath been and still is out of repair and very ruinous, miry, deep, broken, and in great decay, for want of due and needful reparation and amendment of the same, so that the liege subjects of our said Lady the Queen, in and along the same highway with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return, pass, repass, ride, and labour, without great danger of their lives and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said Lady the Queen, in and along the same way going, returning, passing, repassing, riding, and labouring, and against the peace of our said Lady the Queen, her crown and dignity; [and that the inhabitants of the said parish of O. in the said county of S., the said common and public Queen's highway, so being ruinous and in decay as aforesaid, during all the time aforesaid, of right ought to repair and amend, when and so often as it should or shall or may be necessary.]

W. L.

[Or, and that A. O., late of — aforesaid, gentleman, ought, by reason of his tenure of certain lands and tenements situate, lying, and being at — aforesaid in the county aforesaid, to repair and amend the said highway so being ruinous and in decay as aforesaid, when and so often as it should or shall or may be necessary.]

No. 58.

ORDER FOR ERECTING OR REMOVING TOLL GATES, &c.

[See 9 Geo. 4, c. 77, s. 5.]

At a special meeting of the trustees of the turnpike roads, under an Act passed in the —, being assembled at — in the county of —, this — day of —, of which meeting public notice specifying the time and place and purpose thereof has been given in some newspaper, published or circulated in the counties through which the said turnpike road passes [*and also by affixing a copy of such notice on all the turnpikes, toll-gates, or side bars, which are now standing on such road*], fourteen days previously to such meeting:

Order for
erecting toll-
gates.

THE trustees of the said turnpike road, in exercise of the powers of the said Act, and of the general laws relating to turnpike roads, do judge it necessary that there be forthwith erected and built, and, by this order in writing, signed by three at least of the trustees present at such meeting, do order and direct that there shall be forthwith erected and built, in, upon, and across [*or upon the sides of*] the said turnpike road, the several toll-gates, turnpikes, side bars and chains, with toll houses, outhouses, and other conveniences thereto, hereinafter mentioned, (that is to say)

One toll gate or turnpike { in, upon, and across the said
with a toll house, outhouse, { turnpike road, at or near
and other conveniences; { a place called —

One side bar, with a toll { upon the side of the said turn-
house, &c. { pike road, near a place called
{ —, across a certain high-
{ way there leading to —.

And the said trustees do also order, direct, and appoint that there shall be taken in and inclosed, on the sides of the said turnpike road, suitable garden spots for each of such toll houses, (that is to say)

A piece of ground con- { to and for the said toll house
taining — perches or square { at —.
yards, bounded — &c.

And the said trustees likewise order and direct, that the following toll-gates, turnpikes, side bars, and chains now erected in, upon, and across [*or upon the side of*] the said turnpike road, shall be taken down and discontinued, (that is to say)

One toll-gate or turnpike at —.

And that a certain toll-gate, turnpike [*or side bar or*

TOLLS, TOLL-
GATES, &c.
—

chain, &c.] now erected in, upon, and across [*or upon the side of*] the said turnpike road at or near —, shall be removed and placed upon and across [*or upon the side of*] the said road at or near —, the same being a situation which to the said trustees appears fit and eligible.

And the said trustees further order and direct, that the following toll shall be taken at the said gates respectively, (*videlicet*) at the said gate at &c.

N.B.—The statement of tolls is not required by the Act, but is adopted from the Form No. 5, p. 141.

No. 59.

INDICTMENT FOR DESTROYING TURNPIKE GATES, TOLL
HOUSES, &c.

[See 7 & 8 G. 4, c. 30, s. 14.]

Berkshire } THE jurors for our Lady the Queen upon their
to wit. } oath present, that A. B., on the — day of
—, in the — year of our Lord —, a certain turn-
pike gate [*“any turnpike gate or any wall, chain, rail, post,
bar, or other fence, belonging to any turnpike gate, or set up
or erected to prevent passengers passing by without paying
any toll directed to be paid by any Act or Acts of Parlia-
ment relating thereto; or any house, building, or weighing
engine erected for the better collection, ascertainment, or se-
curity of any such toll,”*] situate in the parish of O. in the
county of B., unlawfully and maliciously did throw down,
level, and destroy [*“throw down, level, or otherwise de-
stroy, in whole or in part”*] against the form of the sta-
tute in that case made and provided, and against the
peace of our lady the Queen, her crown and dignity.

No. 60.

CONTRACT FOR LETTING TOLLS.

[See 3 G. 4, c. 126, ss. 55, 57, &c.]

Contract for
letting tolls.

At a meeting of the trustees [*or commissioners*] of the turn-
pike road, under an Act passed in the — year of the
reign of his Majesty King —, for [*state the title of the
Act*], held at —, the — day of —, 18—, by public
notice and advertisement duly given, for the purpose of
letting to farm the tolls of the several gates erected up-

on the said turnpike roads, in the manner directed by an Act passed in the third year of the reign of his Majesty King George the Fourth, and another Act passed in the fourth year of the reign of his said Majesty For regulating Turnpike Roads.

TOLLS, TOLL-
GATES, &c.
—

Conditions of Letting.

1. That the said tolls shall be put up at the sum of ——— Conditions.
[or, shall be put up in parcels or lots at the following sums, viz.]

Lot 1. A bar, £——, &c. [being the sum (or sums) which they produced the preceding year.]

2. That the last or highest bidder [or bidders] above the said sum [or respective sums] to be declared and determined in the manner directed by the said Act of the third year of his Majesty's reign, shall be the farmer or renter of the said tolls for the term of ——— year, from the ——— day of ———.

3 That the rent shall be paid to the trustees [or commissioners] of the said turnpike road for the time being, or their treasurer, or such other person or persons as they shall appoint, by thirteen equal monthly payments, at the end of each successive period of four weeks [or as the case may be] without any deduction; the first payment to be made on the ——— day of ———.

4. That the taker or renter shall perform, &c. (*see the quotation within inverted commas in the next precedent, or insert any other condition which the commissioners may direct*).

5. That the last or highest bidder shall enter into a proper agreement for the taking thereof, and paying the money at the times above specified, with one [or two] sufficient sureties to the satisfaction of the trustees [or commissioners,] for payment of such money, and under the conditions, and in the manner herein directed and stipulated for that purpose.

6 That if the last bidder [or bidders] shall not forthwith enter into such agreement, or shall refuse to perform these conditions, it shall and may be lawful to and for the trustees [or commissioners] of the said turnpike road to put up the said tolls again immediately, or at any time afterwards, and to re-let the same, as if no such bidding had been made; in which case the deposit money (if any) shall be forfeited, and any deficiency on such subsequent letting shall be made good by the defaulter at the present letting, and be recoverable as and for liquidated damages.

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GATES, &c.

MEMORANDUM.

E. F., of —, having become the highest or last bidder for the above-mentioned tolls [*or*, the first lot, &c.] and duly declared the farmer or renter of the same at the sum of —, for [one] year from the — day of —, and having produced G. H., of —, and I. K., of —, as his sureties for the purpose above mentioned, the trustees [*or* commissioners] of the said turnpike road, (in pursuance of the power and authority given to or vested in them in and by the above-mentioned Acts, or some or one of them, and of all other powers and authorities enabling them in this behalf), have contracted and agreed, and do hereby contract and agree with the said E. F. — to let, and the said E. F. doth hereby agree to take the said tolls, and all and every the said gates [comprised in lot 1, &c.] for the term of [one] year from the — day of —, at the yearly rent of — payable as aforesaid, and under and subject to the conditions, stipulations, and agreements hereinbefore contained. And the said E. F. as farmer or renter of the said tolls, and the said G. H. and I. K. as his sureties, do hereby jointly and severally promise, undertake, and agree to and with the trustees [*or* commissioners] of the said turnpike road, that he the said E. F., his executors or administrators, shall and will well and truly pay or cause to be paid the said yearly rent or sum of —, at the times and in the proportions and manner hereinbefore limited and appointed for that purpose, and perform, fulfil, and keep all and singular the conditions, restrictions, and agreements hereinbefore contained, and which on the part of the highest or last bidder, farmer, or renter of the said tolls, are or ought to be performed.

Witness the hands of A. B. and C. D., — of the trustees [*or* commissioners] of the said turnpike road, and of the said E. F., G. H., and I. K., the day and year, and at the place first above written.

A. B. G. H.

C. D. I. K.

E. F.

N.B. This agreement, if signed by two trustees, or by their clerk or treasurer, and the lessee or farmer, and his sureties, is declared to be valid, although not by deed under seal.

No. 61.

LEASE OF TOLLS.

[See 3 G. 4, c. 126, s. 55.]

THIS indenture, made the — day of —, in the year Lease of tolls.
of our Lord one thousand eight hundred and —, Be-
tween A. B., C. D. &c. being — of the trustees [*or com-*
missioners] appointed by or under a certain Act of Parlia-
ment, made and passed in the — year of the reign of his
Majesty —, intituled “An Act, &c.” [*set forth the title of*
the local Act] of the one part, and E. F., of — [G. H., of
—, and I. K., of —], of the other part: Whereas, at a
meeting of the trustees of the said turnpike road, held at
the house of —, in the said [county, &c.] on the — day
of —, by public notice and advertisement duly given, for
the purpose of letting to farm the tolls of the several gates
erected upon the said turnpike road [*or the tolls herein-*
after mentioned], in the manner directed by an Act passed
in the third year of the reign of his Majesty King George
the Fourth, intituled “An Act to amend the general Laws
now in being for regulating Turnpike Roads in that part
of Great Britain called England;” and also by an Act
passed in the fourth year of the reign of his said Majesty,
intituled “An Act,” [*set forth the title of 4 G. 4, c. 95*] the
said E. F. became the highest or last bidder for the same,
at the yearly rent of —, and was accordingly declared the
farmer or renter thereof for the term of — year, from
the — day of —. [And whereas the said G. H. and
I. K. have, at the request of the said E. F. and in order to
satisfy the conditions of letting the said tolls, agreed to be-
come parties to these presents, and to enter as sureties
along with him the said E. F. for payment of the yearly
rent, and for the performance of the covenants and agree-
ments hereinafter reserved and contained.] Now this in-
denture witnesseth, that, for and in consideration of the
rent hereinafter reserved, and of the covenants and agree-
ments hereinafter contained, on the part and behalf of the
said E. F., G. H., and I. K., their respective executors and
administrators, to be paid, done, and performed: they the
said A. B., C. D., &c. in pursuance and exercise of the power
and authority given to or vested in them in and by the
said several recited Acts, or any or either of them, and of
all other power and powers, authority and authorities, in
anywise enabling them in this behalf, have demised, leased,
and to farm let, and by these presents do demise, lease, and

TOLLS, TOLL-
GATES, &c.

to farm let unto the said E. F., his executors and administrators, all and singular the tolls of the several gates erected upon the said turnpike road, and also the said several gates [or of the gate] situate at — [and at the side gate or side bar at —], [and also at the weighing engine erected upon or near the said turnpike road at — (*or as the case may be*)], with full power and authority for him the said E. F., his executors and administrators, and such person or persons as he or they shall authorise or appoint to collect and receive the said tolls, according and subject to the provisions and restrictions of the said several Acts, or any or either of them, and under and subject to such rules, orders, reductions, variations, and regulations as have been or shall at any time or times hereafter be made, ordered, or agreed upon by the said trustees [or commissioners] for the time being of the said turnpike road, pursuant to the powers vested in them in and by the said Acts, or any or either of them: and for that purpose to occupy and enjoy the toll house [or toll houses] at which the said tolls are to be collected and to arise, with all the appurtenances and conveniences to the same toll house [or toll houses] belonging, during so long time only of the term hereby granted as the said E. F., his executors or administrators, shall duly and regularly pay the rent, and perform the covenants and agreements herein reserved and contained: To have and to hold the said tolls and gates, and all and singular other the premises hereinbefore mentioned, and intended to be hereby demised, unto the said E. F., his executors and administrators, from the — day of —, for and during and unto the full end and term of [one] year from thence next ensuing and fully to be complete and ended; yielding and paying therefore during the said term unto the trustees [or commissioners] of the said turnpike road for the time being, or their treasurer (*k*) for the time being, or such other person or persons as they shall appoint, the yearly rent or sum of — of lawful money of Great Britain [by thirteen equal monthly payments in the year, at the end of each successive period of four weeks, *or as the case may be*], without making any deduction or abatement thereout on any account or pretence whatsoever; the first [monthly] payment thereof to begin and be made on the — day of — now next ensuing.

(*k*) See *Pearse v. Morrice*, 3 B. & Ad. 396, App., as to the propriety of making the rent payable to the treasurer only; at all events it must be so made payable if the local Act requires it.

Provided always, and it is hereby declared and agreed by and between the said parties hereto, that if the said rent hereinbefore reserved shall be in arrear by the space of seven days next after any of the days on which the same ought to be paid as aforesaid, and pursuant to the covenant or agreement hereinafter contained, or if the said E. F., his executors or administrators, shall neglect or refuse to perform the covenants and agreements herein contained, and which on his or their part and behalf are or ought to be done and performed, then and in any or either of the said cases it shall and may be lawful to and for the trustees [or commissioners] of the said turnpike road for the time being, or such person or persons as they shall authorise or appoint for that purpose, into and upon the said tolls, gates, toll houses, conveniences, and premises, with the appurtenances, or into or upon any part thereof in the name of the whole wholly to re-enter, and the same to have again, collect, receive, retain, repossess and enjoy, as in their former estate; and the said E. F., his executors and administrators, and all other collectors, receivers, and occupiers of the said premises, thereout and from thenceforth utterly to expel, put out, and remove, and thereupon and from thenceforth to vacate and determine these presents, or otherwise to act in the premises as to them the said trustees or commissioners shall seem meet, according to the directions and provisions in that behalf contained in and by the said several Acts of Parliament, or any or either of them (anything to the contrary thereof hereinbefore contained in anywise notwithstanding). And the said E. F., G. H., and I. K., do hereby for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, covenant, promise, and agree to and with the said A. B., C. D., &c. and the trustees [or commissioners] of the said turnpike road for the time being, that he the said E. F., his executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, unto the trustees or commissioners of the said turnpike road for the time being, or their treasurer for the time being, or such other person or persons as they shall appoint, the said yearly rent or sum of —, by thirteen equal monthly payments at the end of each successive period of four weeks, without any deduction or abatement whatsoever, as aforesaid, according to the true intent and meaning of these presents; And [*to repair the toll house, or any other condition as agreed upon*]; “And also that the said E. F., his executors or administrators, shall and will well and truly observe, fulfil, abide by, pay, and keep all

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GATES, &c.

the conditions, restrictions, provisoes, clauses, and limitations respectively limited, inflicted, and declared in and by the said several hereinbefore recited Acts, or either of them, concerning or appertaining to collectors or gatekeepers, or to the managing, recovering, or receiving the tolls, or on any other account relating to or concerning the office of collector or gatekeeper: And also shall and will, from time to time and at all times during the said term of [one] year, pay obedience to, and perform all and every such orders and directions as shall be legal, and as the trustees [or commissioners] of the said turnpike road, at any of their meetings, during the time aforesaid, shall think expedient and proper to be done by them respectively to the said turnpike road, and to the tolls to arise therefrom." And moreover, that, at the expiration or other sooner determination of the said term of [one] year, whichever shall first happen, he the said E. F., his executors and administrators, shall and will quietly quit, yield, and deliver up the possession of the said toll house [or houses] and toll bar [or bars], and the receipt and collection of the said tolls, to the trustees [or commissioners] for the time being of the said turnpike road, or to such person or persons as they shall appoint for that purpose. In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written (l).

Signed, sealed, &c.

A. B. (L. S.) }
C. D. (L. S.) } &c.
E. F. (L. S.) }

No. 62.

CONVICTION &c. FOR EVADING PAYMENT OF TOLL.

[See 3 G. 4, c. 126, s. 41.]

Evading
tolls.

Same as in the Forms Nos. 17—22, except as to the statement of the offence, which may be thus: That C. D., of — in the county aforesaid, on the — day of — in the year aforesaid, at — in the said county, [did fraudulently pass through a certain toll-gate, on a turnpike road there situate, called —, with a certain horse, which he the said C. D. was then riding, without paying the toll then and there payable for the same, by reason whereof the payment of

(l) As to the stamp necessary for this deed, see *Paul v. Meek*, and *Pearce v. Morrice*, Appendix ii., post.

the said toll was then and there avoided]; [*or, did with a certain horse on which the said A. B. was then and there riding, go off and pass from a certain turnpike road there, over certain land there near and adjoining to such turnpike road, the same land not then and there being a public highway, and the said A. B. not then and there being the owner or occupier, or the servant or one of the family of the owner or occupier of such land, or either of them; with intent then and there to evade payment of the tolls granted in that behalf in and by a certain Act of Parliament made and passed (describe the Act)*] [*or stating some other offence mentioned in the section referred to*]; contrary to the form of the (*m*) statute made in the third year of the reign of King George the Fourth, &c. &c.

TOLLS, TOLL-
GATES, &c.

No. 63.

CONVICTION, &c. FOR WRONGFULLY CLAIMING EXEMPTION FROM TOLL.

[See 3 G. 4, c. 126, s. 36, and 9 G. 4, c. 77, s. 17; *Hulton's Convictions*, 502.]

Same as in the Forms Nos. 17—22, p. 150, &c. except as to the statement of the offence, which may be thus: That C. D., of *Wrongfully claiming exemption.*
—— in the county aforesaid, on the —— day of —— in the year aforesaid, at —— in the said county, did ride a certain horse in, along, and over a certain turnpike road there, and through a certain turnpike gate in and upon the said turnpike road, to wit, a certain turnpike gate called ——, there situate, and did then and there by certain fraudulent means, to wit, that he the said A. B. did then and there fraudulently pretend to one F. H., then and there being the collector of the tolls at the turnpike gate aforesaid, *that the said horse on which he the said A. B. was then and there riding as aforesaid, was then and there going to pasture, claim and take the benefit of an exemption from toll in that behalf contained in the Act of Parliament made and passed in the third year of the reign of his late Majesty King George the Third, intituled "An Act to amend the Laws now in being for regulating Turnpike Roads in that part of Great Britain called England," where-*

(*m*) The words in italics are used in the form of *conviction* given by the statute, but not in the information, summons, &c.

TOLLS, TOLL-
GATES, &c.

as the said horse on which he the said A. B. was then and there riding as aforesaid was not then and there going to pasture, contrary &c.

No. 64.

CONVICTION, &c. AGAINST A TOLL COLLECTOR FOR EXTORTION.

[See 3 G. 4, c. 126, s. 55; 4 G. 4, c. 95, ss. 30, 50; *Hulton's Convictions*, 491.]

Extortion.

Same as the Forms Nos. 17—22, p. 150, &c. except as to the description of the offence, which may be thus: That C. D., of — in the county aforesaid, on the — day of — in the year aforesaid, at — in the said county, being then and there collector of tolls at a certain toll-gate called —, upon a certain turnpike road there situate called —, did demand and take from one E. F. a certain toll, to wit, the toll or sum of —, as and for a toll then and there payable by the said E. F. at such gate for a certain [horse] on which the said E. F. was then and there [riding] in, along, and over the said turnpike road, and for which said [horse] a certain toll, to wit, the sum of — only was then and there payable by the said E. F., the said toll or sum of — so demanded and taken by the said C. D. as aforesaid then and there being a greater toll than he the said C. D. was then authorised to take for the cause aforesaid by virtue of the powers of any Act, or of the orders and resolutions of the trustees [or commissioners] of the said turnpike road made in pursuance thereof, contrary to the form of the statute, &c.

If an exemption from toll has been claimed and not allowed, say—

That C. D., &c. being then and there collector of tolls at a certain toll-gate called —, upon a certain turnpike road situate at the township aforesaid in the county aforesaid, did demand and take from one S. G. for a certain [cart and horse] of the said S. G. a certain toll, to wit, the toll and sum of —, the said S. G. being then and there exempt from the payment of the said toll or any toll whatever by reason and on account of the said [cart and horse] being then and there employed by the said S. G. in carrying and conveying certain dung and manure for improving lands, and though the said S. G. then and there claimed of and from the said A. B. such exemption, contrary to the statute in such case made and provided.

TOLLS, TOLL-
GATES, &c.
—

No. 65.

CONVICTION, &c. FOR A NAME NOT BEING PAINTED ON A
WAGGON, &c.[See 4 G. 4, c. 95, s. 15; *Archbold's Convictions*, 224.]

Same as in the Forms Nos. 17—22, p. 150, &c. except as to the statement of the offence, which may be thus: That C. D., of — in the county aforesaid, farmer, on the — day of — in the year aforesaid, at — in the said county, did use a certain waggon [wain, cart, or other such carriage], of him the said C. D., upon a certain turnpike road there situate, called —, and that the said C. D. did not, before he used the same upon the said turnpike road, paint or cause to be painted on the right or off-side of the said waggon, or upon the off-side shaft thereof, his christian name and surname, and place of abode, in large legible letters; but, on the contrary thereof, he the said C. D. caused the said waggon to be used upon the said turnpike road, without the name and place of abode of him the said C. D. being painted upon the right or off-side of the said waggon, or on the off-side shaft thereof, as aforesaid, contrary to the form of the statute made in the fourth year of the reign of King George the Fourth, intituled “An Act to explain and amend an Act passed in the third year of the reign of his present Majesty, to amend the general Laws now in being for regulating Turnpike Roads in that Part of Great Britain called England,” &c. &c.

Not painting
name on
cart, &c.

No. 66.

CONVICTION, &c. AGAINST A DRIVER FOR RIDING ON HIS
CART, &c.

[See 3 G. 4, c. 126, s. 132.]

Same as in the Forms Nos. 17—22, p. 150, &c. except as to the statement of the offence, which may be thus: That C. D., of — in the county aforesaid, labourer, on the — day of — in the year aforesaid, at — in the said county, being then and there the driver of a certain waggon [waggon or cart] did then and there ride upon the said waggon in and upon a certain turnpike road there situate, called —, not having then and there some other person on foot or on horseback to guide the said waggon, and the same not being then and there one of such light carts as are usually

Riding on
carts, &c.

CARTS,
WAGGONS, &c.

driven with reins, and are then conducted by some person holding the reins of the horse or horses [not being more than two,] drawing the same, [*or stating some other offence within stat. 3 G. 4, c. 196, s. 132*]; contrary to the form of the statute made in the third year of the reign of King George the Fourth, &c. &c.; and that the said C. D. was [*or was not*] then and there [also] the owner of the said waggon, whereby the said C. D. hath incurred a forfeiture of not exceeding —, to wit — &c.

No. 67.

CONVICTION FOR NOT USING SKIDPANS OR SLIPPERS.

[*See 3 G. 4, c. 126, s. 126; Archbold's Convictions, 221.*]

Skid-pans.

Same as in the Forms Nos. 17—22, p. 150, &c., except as to the description of the offence, which may be thus: That, before and at the time of the committing of the offence hereinafter mentioned, a certain order before then made by the trustees of a certain turnpike road, called —, situate partly in the parish of — in the county aforesaid, was in force, whereby it was ordered and directed, that [in all cases where any waggon or cart should descend any hill on the said road with either of the wheels locked, a skidpan or slipper should be used or placed at the bottom of such wheel during the whole time of its being so locked, in such manner as to prevent the said road from being destroyed or injured by the locking of such wheel;] and that whilst the said order was so in force as aforesaid, to wit, on the — day of — in the year aforesaid, at the parish aforesaid in the county aforesaid, C. D., of — in the said county, did then and there drive a certain waggon down a certain hill upon the said turnpike road, with one of the wheels of the said waggon locked, without using or having such skidpan or slipper at the bottom of such wheel, in manner as by the said order was ordered and directed as aforesaid, contrary to the form of the statute made in the third year of the reign of King George the Fourth, &c. &c.

No. 68.

NOTICE TO MAKE DRAINS AND BRIDGES, &c.

[*See 3 G. 4, c. 126, s. 113.*]

Annoyances.

I, A. B., surveyor of the turnpike road [*describing it*] do hereby give you notice and require you forthwith to [make]

[scour, cleanse, and keep open,] of the depth of — feet, and of the breadth of — feet [or of sufficient depth and breadth for the keeping the said turnpike road dry, and conveying the water from the same], a certain ditch, drain, or watercourse, [or the several ditches, drains, and watercourses], running through the lands or grounds occupied by you at —, adjoining to [or lying near] the said turnpike road, and through which said lands or grounds the water hath heretofore been used to pass from the said turnpike road, [or to make and lay a good and sufficient trunk, tunnel, plat, or bridge,] at — &c., where a certain carriage-way [or foot-way] leads out of the said turnpike road into the lands or grounds adjoining thereto, occupied by you.

INJURIES,
NUISANCES,
&c.
—To make
tunnels.

N.B. Non-compliance with this notice for ten days subjects the occupier to a penalty of 5*l.*—p. 105.

No. 69.

NOTICE TO TURN OR CLEANSK WATERCOURSES.

[See 3 *G. 4, c. 126, s. 114.*]

I, A. B., surveyor of the turnpike road [*describing it*] do hereby give you notice and require you forthwith to turn and rectify the course of a certain watercourse [sink, or drain] belonging to you [or to land occupied by you], at — in the [parish] &c., running into, along, or out of the said turnpike road, to the prejudice thereof; [or, to open, scour, and cleanse a certain watercourse or ditch, (or the several watercourses and ditches) adjoining to lands belonging to (or occupied by) you and to the said turnpike road, at — in the (parish, &c.) and to make the same of the depth of — and of the width, &c.]

Drains, &c.

Dated this — day of — 18 —.

N.B. If the owner makes default after seven days' notice, the surveyor is authorised to turn the drains, &c., at the charges of the owner.—pp. 106, 107.

No. 70.

NOTICE TO REMOVE ANNOYANCES.

[See 3 *G. 4, c. 126, s. 114.*]

I, A. B., surveyor of the turnpike road [*describing it*] do hereby give you notice and require you forthwith to remove

Annoyances.

INJURIES,
NUISANCES,
&c.
—

the filth, [dung, ashes, rubbish, or any other matters or things whatsoever,] laid or thrown upon the said turnpike road, [or, on a certain open common or waste land within eighty feet of the centre of the said turnpike road,] lying between — and — in the (parish, &c.) of —, to the annoyance of the said turnpike road.

Dated this — day of — 18 — A. B.

N. B. These annoyances may be removed and disposed of for the benefit of the road, if not removed by the owner within twelve hours after the notice.—p. 106.

No. 71.

CONVICTION, &c. FOR LAYING RUBBISH ON THE ROAD, &c.

[See 3 G. 4, c. 126, s. 114; Archbold's Convictions, 218.]

Laying rub-
bish, &c.

Same as in the Forms Nos. 17—22, p. 150, &c., except as to the statement of the offence, which may be thus: That, before the commission of the offence hereinafter mentioned, to wit, on the — day of — in the year aforesaid, at — in the county aforesaid, C. D., of — in the said county, labourer, did lay and throw a large quantity of filth and rubbish upon a certain turnpike road there situate, called —, which the surveyor of the said turnpike road did then and there cause to be removed; and that the said C. D., after the removal of the said annoyance, to wit, on the — day of — aforesaid, at — in the county aforesaid, did [lay and throw upon the said turnpike road a certain other large quantity of filth and rubbish]; [*or stating some other offence within stat. 3 G. 4, c. 126, s. 114;*] contrary to the form of the statute made in the third year of the reign of King George the Fourth, &c. &c.

No. 72.

NOTICE TO CUT HEDGES PREJUDICING THE ROAD.

[See 3 G. 4, c. 126, s. 116.]

Hedges, &c.

I, A. B., surveyor of the turnpike road [*describing it,*] do hereby give you notice and require you forthwith to cut, prune, and trim to the height of six feet from the surface of the ground, all the hedges belonging to you as the owner or occupier of land next adjoining to the said turnpike road; and also to cut down, prune, or lop the branches of trees, bushes, and shrubs growing in or near such hedges

or other fences adjacent thereto, in such manner that the said turnpike road shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such turnpike road to the damage thereof.

INJURIES,
NUISANCES,
&c.
—

Dated this — day of —, 18—.

N.B.—If the owner refuses to comply with this notice, he may at the end of ten days be summoned to attend a justice, to answer. For Form of Summons, see No. 17, p. 150.

No. 73.

ORDER TO CUT DOWN TREES, &c.

[See 3 G. 4, c. 126, s. 116.]

County of } WHEREAS complaint has been made unto me, Justices' or-
— } J. P., esquire, one of her Majesty's justices der to cut
of the peace in and for the county of — acting within down trees,
the hundred of — upon the oath of A. S., surveyor of the &c.
turnpike road [*describing it*], that B. O., of —, hath had
due notice from him the said surveyor to cut, prune, and
trim the hedges belonging to the said B. O., as the
owner [*or occupier*] of certain land at —, and next ad-
joining to the said turnpike road, to the height of six feet
from the surface of the ground, and also to cut down, prune,
or lop the branches of the trees, bushes, and shrubs growing
in or near such hedges or other fences adjacent thereto, in
such manner that the said turnpike road should not be
prejudiced by the shade thereof, and that the sun and wind
might not be excluded from the said turnpike road, to the
damage thereof, pursuant to the statute made in the third
year of the reign of his Majesty King George the Fourth,
"For regulating Turnpike Roads," but that he the said
B. O. hath not complied with such notice, or with the
requisites of the said Act. And whereas the said B. O.,
having been duly summoned to answer the said complaint,
hath appeared (by N. P. his agent) pursuant to such sum-
mons, [*or hath made default in his appearance*]; and it ap-
pearing to me that the said B. O. has not complied with
the requisites of the said Act in that behalf, I, the said
justice, upon hearing the said A. S. and B. O. [*or, in default
of his appearance, upon having due proof of the service of
the said summons*], and considering the circumstances of
the case, do order that the said hedges shall forthwith be
cut, pruned, and trimmed by the said B. O. to the height of
six feet from the surface of the ground; and that the said

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—

branches of trees, bushes, and shrubs, growing in or near the said hedges or other fences adjacent thereto, shall forthwith be cut down, pruned, and lopped by the said B. O. in such manner that the said turnpike road shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from the said turnpike road to the damage thereof. And I do further order, that, in case the said B. O. shall not obey this order within ten days from the date hereof, then the said A. S. do cut, prune, and trim such hedges, and cut down, prune, or trim such branches of trees, bushes, and shrubs, in the manner directed by this order, and according to the directions of the said Act, and proceed against the said B. O. for recovery of the penalties and charges he will thereby incur.

Given under my hand and seal this — day of — one thousand eight hundred and —.

J. P. (L.S.)

No. 74.

CONVICTION, &c. FOR NOT TRIMMING HEDGES.

[See 3 G. 4, c. 126, s. 116; *Archbold's Convictions*, 220.]

Conviction.

Same as in the Forms Nos. 17—22, p. 150, &c. except as to the statement of the offence, which may be thus: That C. D. of — in the county aforesaid, on the — day of — in the year aforesaid, at — in the said county, occupying then and there certain lands next adjoining to a certain turnpike road there situate, called —, did not within ten days after the making of a certain order by me in that behalf, and notice thereof to him the said C. D. duly given, [“cut, prune, and trim his hedges to the height of six feet from the surface of the ground;” or, “cut down, prune, and trim certain branches of trees, bushes, and shrubs, growing in and near to his hedges and other fences adjacent thereto, (the said fences, trees, bushes, and shrubs not being in any garden, orchard, plantation, walk or avenue to a house, nor being trees, bushes or shrubs which were an ornament or shelter to a house;” or, “the said branches then and there hanging over the said road in such manner as to impede and annoy carriages and persons travelling thereon;”] as he the said C. D. was directed and required by the said order, contrary to the form of the statute made in the third year of the reign of King George the Fourth, &c. &c.

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NUISANCES,
&c.
—

No. 75.

NOTICE TO REMOVE A GATE OVERHANGING THE ROAD.

[See 3 G. 4, c. 126, s. 125.]

I, A. B., (&c. *as above*,) do hereby give you notice, that the door [*or gate*] of a certain building; [park,] [paddock,] [field,] [*or inclosure*,] situate between — and —, is now made to open into or towards the said turnpike road [*or*, a certain footpath belonging to the said turnpike road], and the hanging post whereof is not fixed or placed so far from the centre of the said turnpike road as that no part of such door or gate when open projects over such turnpike road [*or footpath*], contrary to the meaning of an Act passed in the third year of the reign of his Majesty King George the Fourth, "For regulating Turnpike Roads." And I do therefore hereby give you notice and require you forthwith to cause such door [*or gate*] to be hung so that no part of the same, when open, shall project over any part of such turnpike road [*or footpath*], according to the directions of the said Act, &c.

Gates over-
hanging the
road.

N. B. On default by the owner within fourteen days after notice, the surveyor may cause the door or gate to be properly hung, at the expense of such owner, who will also forfeit 40s.

No. 76.

CONVICTION, &c. FOR ENCROACHING ON A ROAD.

[See 3 G. 4, c. 126, s. 118.]

Same as in the Forms Nos. 17—22, p. 150, &c. except as to the statement of the offence, which may be thus: That C. D., of — in the said county, on the — day of — last, at — in the said county, did make or cause to be made a certain hedge at the side of a certain turnpike road there situate, called —, in such manner as to reduce the breadth and confine the limits of the said turnpike road [*or otherwise describing some other offence within stat. 3 G. 4, c. 126, s. 118*], contrary to the form of the statute made in the third year of the reign of King George the Fourth, intituled "An Act" &c.

Encroaching
on road.

INJURIES,
NUISANCES,
&c.

No. 77.

CONVICTION, &c. FOR RIDING OR DRIVING ON, OR INJURING,
A FOOTPATH.

[See 3 G. 4, c. 126, s. 121 ; 7 & 8 G. 4, c. 24, s. 16.]

Injuring
foot-paths.

Same as in the Forms Nos. 17—22, except as to the statement of the offence, which may be thus: That C. D., of — in the said county, yeoman, on the — day of — now last past, at — in the said county, did ride upon [or did lead (or drive) a certain horse, ass, mule, carriage, &c. upon, or did cause certain and serious injury and damage to be done to] a certain footpath and causeway by the side of and adjacent to a certain turnpike road there situate and called — (and which said footpath and causeway was then and there a public footpath and causeway, which had been and was then and there made and set apart for the use and accommodation of foot-passengers there), to the prejudice, annoyance, interruption, and personal danger of a certain person, to wit, the said A. B., who was then and there travelling on the said footpath and causeway, and contrary to the form of the statute made in the third year of the reign of his Majesty King George the Fourth, intituled “An Act,” &c., and also contrary to the statute made and passed in the session of Parliament held in the seventh and eighth years of the reign of his Majesty King George the Fourth, intituled “An Act,” &c., which hath imposed a forfeiture of any sum not exceeding forty shillings for the said offence.

No. 78.

CONVICTION, &c. FOR A NUISANCE ON A TURNPIKE ROAD.

[See 3 G. 4, c. 126, s. 121.]

Conviction
for a nuisance.

Same as in the Forms Nos. 17—22, except as to the description of the offence, which may be thus: That C. D., of — in the said county, on the — day of — in the year aforesaid, at — in the said county, did lay a certain large quantity of timber, [or stone, hay, straw, dung, manure, soil, ashes, rubbish, &c.] upon a certain turnpike road there situate and called —, to the prejudice of the

said road, and to the prejudice, annoyance, interruption, and personal danger of a certain person, to wit, the said A. B., who was then and there travelling on the said turnpike road, and contrary &c. [*or, did suffer a certain large quantity of water, (filth, dirt, &c.) to run and flow into and upon a certain turnpike road there situate and called —, from a certain house (erection, &c.) of him the said C. D., situate at —, and adjacent to the said turnpike road, contrary &c.*]

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&c.
—

[*Or stating any of the other offences in the section referred to.*]

No. 79.

CONVICTION FOR TAKING GRAVEL FROM A TURNPIKE ROAD,
OR OTHERWISE INJURING IT.

[*See 4 G. 4, c. 95, s. 72.*]

Same as in the Forms Nos. 17—22, except as to the de- Taking
scription of the offence, which may be thus: That C. D., of gravel from
— in the county aforesaid, labourer, on the — day of the road, &c.
— in the year aforesaid, at — in the said county,
upon a certain turnpike road there situate called —, did
(without being thereunto authorised by the surveyor or
surveyors for the time being acting under any Act or
Acts of Parliament, or any other surveyor or surveyors
lawfully empowered to grant such authority) scrape to-
gether and carry away a certain large quantity, to wit,
one cart-load of stone, gravel, and sand from off the said
turnpike road [*or stating some other offence within the section
referred to*]; contrary to the form of the statute made in
the fourth year of the reign of King George the Fourth,
intituled “An Act to explain and amend an Act passed
in the third year of the reign of his present Majesty, to
amend the general Laws now in being for regulating Turn-
pike Roads in that part of Great Britain called England.”

INJURIES,
NUISANCES,
&c.
—

No. 80.

CONVICTIONS, &c. FOR BREAKING LAMPS.

[See 7 & 8 G. 4, c. 24, s. 6; *Hulton's Convictions*, 512.]

Breaking
lamps.

Same as in the Forms Nos. 17—22, except as to the statement of the offence, which may be thus: That C. D., of — in the county aforesaid, labourer, on the — day of — in the year aforesaid, at — in the said county, a certain lamp then and there placed and set up against and in front of a certain toll-house, situate on a certain turnpike road at — aforesaid in the county aforesaid, did damage and injure, contrary to the form &c.

APPENDIX II.

CASES.

EXTENT OF GENERAL LAWS.

Ridge v. Garlick, 8 Taunt. 424.—1818.

THE question in this case turned upon the construction of a local Act passed subsequently to the old General Turnpike Act, 13 G. 3, c. 84. The 23rd section of the latter Act empowered the trustees to take additional tolls upon narrow-wheeled carriages, and the local Act imposed specific tolls on carriages, in proportion to the breadth of their wheels; and the Court held that the framers of the local Act must be considered as having had the General Act in view throughout,—and consequently the local Act virtually repealed the power granted by the General Act to take additional tolls.

EXTENT OF GENERAL LAWS.

Construction
of local Act
prior to 3 G.
4, c. 126.

Rex v. Northleach and Witney Road Trustees,
5 B. & Ad. 978.—1834.

A local turnpike Act directed that the trustees should keep books, in which they should enter their accounts, and also their orders and proceedings, and that *all persons* should have access to such entries. By a subsequent local Act it was directed, that the trustees should keep a book in which they should enter their accounts, which book should be open to the inspection of the trustees, or of *any creditor on the tolls*. A mandamus was applied for to permit an inspection of the books by a person who was neither a trustee nor creditor. But it was held, that the General Turnpike Act, 3 G. 4, c. 126, ss. 72, 73, and the second local Act, superseded the provisions of the original Act, and limited the power of inspection at first given to the whole public, confining it to trustees, and to trustees and creditors, in the respective cases of orders and accounts.

Construction
of a local Act
subsequent
to 3 G. 4,
c. 126.

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Denman, C. J.—The effect of sect. 4 of the General Turnpike Act is to incorporate that statute with all particular Acts; and, therefore, sections 72 and 73 of the General Act must be taken as part of 24 G. 2, c. 28 (the local Act); and if they are inconsistent with the clauses of that Act relating to the accounts and orders, the latter must be considered as not continued; otherwise the very evil would ensue which that Act was intended to prevent, namely, the want of uniformity in the laws regulating turnpike roads throughout the kingdom. I also doubt, on another ground, whether a *mandamus* lies in this case. The books were offered on the application of the parties, as a matter of favour, not of right. It might be important to assert the right, but then the person who made the application might have said that he accepted the liberty of inspection as a right, not as a favour. If upon that the books had been withheld, a *mandamus* might have been applied for, supposing the parties had been in other respects entitled to it.

See also *Pearse v. Morrice*, post.

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Rex v. Cheshunt Turnpike Road Trustees,
5 B. & Ad. 438.—1834.

Mandamus
lies to admit
a clerk of
trustees un-
der the ge-
neral Turn-
pike Acts.

A *mandamus* against the above trustees was applied for to admit Richard Jordan into the place and office of their clerk. In opposition to the rule it was argued, that a clerk to turnpike trustees had not, by the general Turnpike Acts (under which these roads were managed), such a tenure in his office as could render it properly the subject of a writ of *mandamus*. On the other hand it was urged, that, under the provisions of the Acts, and particularly 4 G. 4, c. 95, s. 43, and 9 G. 4, c. 77, s. 15, the clerk had a valuable estate in his office; that, by 4 G. 4, c. 95, s. 39, the order appointing such clerk could not be revoked without certain notices and formalities, nor without the assent of a greater number of trustees that concurred in making the order; and that the case was entirely different from that of a vestry clerk, (*Rex v. Churchwardens of Croydon*, 5 T. R. 713), who had no lasting interest in his office, but might be elected merely *pro hac vice*.

The Court, on consideration of the clauses referred to, and particularly on a comparison of sections 43 and 39 of 4 G. 4. c. 95, were of opinion that a *mandamus* lay; and they consequently made the rule absolute.

Towsey v. White, 5 B. & C. 125.—1826.

Liability of
trustees for

In an action of debt for penalties, under 3 G. 4, c. 126, s. 65, it appeared in evidence that the defendant was one of the commis-

sioners of a certain turnpike road, and had acted as such, and ordered the surveyor, upon different occasions, where to put stones upon the road; and that, it being determined by the commissioners to improve a certain portion of the said road, they caused a meeting of commissioners, for the purpose of letting the same by tender, to be advertised; that such meeting was accordingly holden, at which the defendant attended with other commissioners, and acted with them, when a contract for making the intended improvement was entered into with one Hodgkinson, who agreed to perform the same according to a plan and specification, for the gross sum of 119*l*. Hodgkinson commenced his work at first with men only, but afterwards applied to the defendant to let him his horses and carts. The defendant agreed to let them at the rate of 5*s*. a-day for each horse and cart, and accordingly furnished three horses and three carts for about a week, and afterwards a greater number, and they were used in hauling earth and stones on the part of the road in question so agreed to be improved. Hodgkinson told him what it was for, and saw the defendant there whilst the horses and carts were so used. He paid the defendant for the letting of each horse and cart, by an order on the treasurer of the trustees, but without any reference to his, Hodgkinson's, contract with the trustees; and the whole was so paid by Hodgkinson, previously to the payment of his own demand by the trustees according to the contract. Hodgkinson went to the defendant and asked him for his horses and carts; the defendant did not go to him. And Hodgkinson hired horses and carts of other persons, and he paid all alike. Upon these facts, the Court held that the defendant had, by his conduct, subjected himself to the penalties contained in the Act. But the notice of action not having stated that the defendant, when he let his horse and cart to hire, was a trustee *acting* in the execution of the Act, it was held bad.

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—
being concerned in contract.

Bayley, J.—Upon the question whether the defendant has committed an offence within the meaning of the 3 G. 4, c. 126, s. 65, I have no doubt whatever. This is a case clearly within the spirit of the Act. The great object of the legislature was to prevent any bargaining between the trustees and the contractors, so as to give the former an interest adverse to their duty. Now, it is the duty of a trustee to take care that the work to be done upon the roads should be contracted for on terms the least expensive to the public. But if such trustee has horses and carts to let to hire, and he may lawfully let them to any person who contracts to do the work upon the roads, the consequence will be, that, where several persons offer to do the work, it will become the interest of the trustees to give an undue preference to that person who is willing to hire his horses and carts. This is a case, therefore, within the mischief contemplated by the Act, and it is a case within the words of the Act, for the defendant did let out his cart and horses for the use of the turnpike road, for which he acted as a trustee. Then comes the question, whether the notice given in this case was sufficient to entitle the plaintiff to sue;

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and that raises two questions, the first is, whether, according to the true construction of the 3 G. 4, c. 126, s. 143, a plaintiff who omits to give notice, or who gives an insufficient notice, be barred of his right of action, or only deprived of his right to costs. The second question is, whether the notice given in this case was such as the Act of Parliament required. I am of opinion, that the effect of a plaintiff's omitting to give any notice or to give such a notice as the Act requires, is to deprive him not merely of the right to recover costs, but to recover at all. Section 143 enacts, that if the sum sought to be recovered exceed 20*l.*, the party is to bring his action in the superior Courts; and the plaintiff, if he recovers, shall have full costs, provided that there shall not be more than one recovery for the same offence, and that twenty-one days' notice be given to the party offending previous to the commencement of such action, and that the same be commenced within three calendar months after the offence. Now, whether the proviso applies only to the matter immediately preceding it, which relates to costs, or to the whole of the preceding sentence, must be collected from the context and nature of the other parts of the proviso. Now, the first part of the proviso, which enacts, that there shall be no more than one recovery for the same offence, could not have been intended to apply to the right to recover costs only. It is impossible that the legislature could have intended to subject a party to several actions for the same offence, provided the party suing him were willing to forego costs. The same observation applies to the last part of the proviso. It never could have been intended that a party should be subjected to an action at any distance of time for a penalty, provided the plaintiff were willing to forego his costs. As two out of three parts of the proviso much have been intended to apply to the whole of the matter in the sentence, and not to that which immediately preceded it, it may be fairly inferred that the other part, which requires that notice should be given, applies to the whole of the sentence, and consequently it is a condition precedent to the right of bringing an action, that the party suing should give the notice required by the Act. I am therefore of opinion, that it was the intention of the legislature that a party suing for a penalty under this statute should be deprived of any right of action unless he complied with the terms of the proviso; one of which is, that he gave the notice required by the Act of Parliament. That being so, then the question arises whether the notice in this case was sufficient. The proviso requires twenty-one days' notice to be given to the party offending previous to the commencement of such action. That implies, that some communication should be made to the defendant of the intention of the plaintiff to sue. It certainly would not be sufficient for a party to state in the notice that the defendant had offended against the statute; and if a notice in that general form would not be good, some degree of particularity is required. Now, I am of opinion that it ought at least to be shewn on the face of the notice that an offence was committed against the Act of Parliament; and

no offence could have been committed, unless the defendant, at the time when he let his cart and horses to the contractor, acted as a trustee. It is not stated in the notice, that the defendant did at that time act as trustee. An essential ingredient in the offence created by the Act is therefore omitted; and upon that ground alone I think the notice is bad.

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Leader v. Moxon, 3 Wils. 461, 2 Bl. 924.

In this case it was held that an action may be maintained against the commissioners under a paving Act for raising the street, and thereby injuring dwelling-houses. And see *Weld v. Gas Light Company*, 1 Stark. 189; *Matthews v. West London Water Works*, 3 Camp. 403. But see *Boulton v. Crowther*, *Sutton v. Clarke &c.*, *post*, in which this case is observed upon.

Action for raising a street under a paving Act held sustainable.

Cast Plate Manufacturers v. Meredith, 4 T. R. 794.—1792.

This was an action for damages occasioned by raising a pavement under a Paving Act, to the commissioners for which the defendant was the pavior. The injury was admitted, but it was proved that such injury had not exceeded what was necessary for carrying the Act into execution; and the case of *Leader v. Moxon* was relied on as establishing the principle, that the commissioners under such Acts were liable to make good to individuals any actual damage sustained by their acts. But the Court decided that the plaintiffs were not liable, there being a clause in the Act empowering the trustees to make allowances where any material injury was sustained.

Trustees not liable for consequential damages occasioned by what they are legally authorised to do.

Lord Kenyon, C. J.—If this action could be maintained, every Turnpike Act, Paving Act, and Navigation Act would give rise to an infinity of actions. If the legislature think it necessary, as they do in many cases, they enable the commissioners to award satisfaction to the individuals who happen to suffer. But if there be no such power, the parties are without remedy, provided the commissioners do not exceed their jurisdiction. But it does not seem to me that the commissioners acting under this Act have been guilty of any excess of jurisdiction. Some individuals suffer an inconvenience under all these Acts of Parliament; but the interests of individuals must give way to the accommodation of the public. I doubt the accuracy of the report of the case cited from *Wilson*; for I cannot conceive that the Judges, in considering whether or not the action could be supported, laid any stress on the enormity of the damage sustained by the plaintiff. That circumstance might have induced the jury to increase the damages, if the action could be supported, but could not of itself give a cause of action: that must have depended on the question, whether or not the commissioners exceeded their jurisdiction.

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Buller, J.—The question here is, whether or not this action can be maintained; and I am clearly of opinion that it cannot, because a particular remedy is pointed out by the Act. If there had been no clause in the Act empowering the commissioners to give satisfaction to the party grieved, I am by no means satisfied that, on the broad principle stated by the plaintiff's counsel, any action could be maintained. There are many cases in which individuals sustain an injury, for which the law gives no action; for instance, pulling down houses, or raising bulwarks, for the preservation and defence of the kingdom against the king's enemies. The civil law writers, indeed, say that the individuals who suffer have a right to resort to the public for a satisfaction: but no one ever thought that the common law gave an action against the individual who pulled down the house, &c. This is one of those cases to which the maxim applies, "*salus populi suprema est lex.*" If the thing complained of were lawful at the time, no action can be sustained against the party doing the act. In this case express power was given to the commissioners to raise the pavement; and, not having exceeded their power, they are not liable to an action for having done it.

Grose, J.—The clause in the Act, which empowers the commissioners to award satisfaction, is decisive against this action.

Sutton v. Clarke, 1 Marsh. 429; 6 Taunt. 29.—1815.

Trustees not
liable for da-
mages
when they
do not ex-
ceed their
authority.

A turnpike Act authorised the trustees or surveyor, amongst other things, to cut any watercourses "in, through, or across any lands or grounds, in order to drain or prevent the road from being overflowed, making such reasonable satisfaction to the owners or occupiers of such grounds as to the said trustees should seem reasonable." Under this authority a drain was cut, in pursuance of a plan which had been approved of by a surveyor. The order by which the drain was made was signed by a competent number of trustees, and by the chairman. In consequence of the drain having been contracted in its width towards the bottom, it straitened the passage for the water, and threw it on the adjoining land, which was thereby overflowed and damaged. The owner made no application to any meeting of the trustees for compensation, but brought an action against one of the trustees (the chairman), who had signed the order.

The judgment in this case is too important to be abridged.

Gibbs, C. J.—This is an action brought by the plaintiff against one of several trustees under a turnpike Act, who had joined in an order made by the trustees for cutting a drain through certain lands, the consequence of which drain was, though not foreseen at the time of making it, that considerable damage was done to the plaintiff's estate. The trustees, who were guilty of no excess of jurisdiction, informed themselves as well as they could, by the opinion of their surveyor, how this might be done without injury

to the surrounding grounds. No imputation of negligence rests on them, and they did the act in the manner, which, according to the best information they could obtain, was the best mode. Nevertheless it did produce this consequence. By the statute, no action can be brought unless within six months next after the doing the matter or thing for which such action shall be brought. This trench was cut more than six months before the action, and the first injury felt by the plaintiff occurred more than six months before the action; but another injury was afterwards sustained, for which, within six months after, this action is brought. Three answers are attempted to be given to the plaintiff's demand: first, that the other trustees ought to have been joined. On that point, and supposing that to be the only objection, it is clear that the action is maintainable. Another objection is, that the defendant was a trustee under an Act of Parliament, executing duties imposed on him by the Act, and deriving no emolument from what he did, acting to the best of his skill and judgment at the time, taking the best advice, and doing only that which it was his duty to do; and that, if such was his conduct, he was not answerable for the subsequent consequences. Upon the discussion of this point, two cases were cited, one of which is supposed to be a clear authority for the plaintiff, and the other, it is contended on the other side, is an equally clear authority for the defendant. The first is the case of *Leader v. Moron*. That was an action against commissioners for so raising the pavement as to obstruct the plaintiff's doors and windows. The commissioners did not exceed their jurisdiction, and were exercising powers given them by an Act of Parliament; but the Court thought they were acting in a most tyrannical and oppressive manner, and that, though they had a right to pave, and perhaps to raise the street, they had acted so arbitrarily that they were answerable. With that judgment this Court entirely agrees. If commissioners, acting within their jurisdiction, act wantonly and oppressively, they are responsible to any individual for the injury they do him. There the injury might have been avoided by doing the act in a different way: here the commissioners, at the time of doing the act, took every precaution to prevent injury to the surrounding land. The other case is that of *The Governors and Company of the British Cast Plate Manufacturers v. Meredith*. Commissioners were directed to pave, repair, raise, sink, or alter, and render secure a very abrupt and dangerous place in the road, and they had, in so doing, raised the ground opposite to the gateway of the plaintiffs, so that they could not enter the gateway. The commissioners were directed by the Act to make this a gradual descent; and the case reserved stated, that it could only be done by making it a regular inclined plane from the top to the bottom, which they had done. The Act, therefore, which prescribed what should be done, in effect prescribed the manner of doing it, because there was no other manner: that, therefore, does not come up to the defendant's case; here the Act prescribes what shall be done, but not the manner of doing it. This case, therefore, is to be determined on

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principle alone; and, upon principle, we are of opinion that the defendant is not answerable in this action. This case is perfectly unlike that of an individual, who, for his own benefit, makes an improvement on his own land, according to the best skill and diligence, and not foreseeing it will produce any injury to his neighbour: if he thereby unwittingly injure his neighbour, he is answerable. The resemblance fails in the most important point of comparison, that his act is not done for a public purpose, but for private emolument. Here the defendant is not a volunteer: he executes a duty imposed on him by the legislature, which he is bound to execute. He exercises his best skill, diligence, and caution in the execution of it, and we are of opinion that he is not liable for an injury, which he did not only not foresee, but could not foresee. He has done all that was incumbent on him, having used his best skill and diligence. Another point was made on the limitation of the time; but, having disposed of the case in favour of the defendant, and decided that there must be a nonsuit upon the second point, it is unnecessary for us to decide on the other.—Rule absolute.

With regard to the last question, it was observed by *Gibbs*, C. J., in the course of the argument, that the case of *Roberts v. Read* (see *post*), let the plaintiff loose from the very great difficulty imposed by the words, (which, it might be, were very absurd and unjust), of making the act done, and not, as in the statute 21 Jac. 2, c. 16, the cause of the action, the criterion of the time. The Court of King's Bench had got over the difficulty, and attained the justice of the case; he should have had great difficulty in coming to that decision, but thought the Court ought not to recede from it, because it favoured the attainment of justice. But in this case the Court ultimately refrained from expressing any opinion upon this very important question. And see *Miller v. Leare*, 2 M. & Bl. 1141.

Humphreys v. Mears, 1 M. & Ry. 187.

Trustees held
not liable
without per-
sonal inter-
ference.

In this case the trustees of a turnpike road were held not personally liable in damages for any injury occasioned by the negligence of contractors or others employed under them in the performance of public works upon the road, unless they personally interfere in the management of the works; the general rule being, that persons performing a public duty shall not be liable for the negligence of those employed under them.

Boulton v. Crowther, 2 B. & C. 703—1824.

Trustees not
liable to da-

This case arose under 3 G. 4, c. 126, s. 83. It appeared that the road adjoining to the plaintiff's pleasure-ground had been

lowered in one part and raised in another, by the order of the trustees; so that the entrance gates to his premises situate next those parts of the road could not be used by persons coming to his premises with carts and other carriages; and it also appeared that part of the materials of the road had fallen into the plaintiff's premises, and damaged his hedge and plantations. Some evidence was given to shew that the injury to the plaintiff accrued partly from the work having been done carelessly and negligently; but it was contended by the plaintiff's counsel, that the plaintiff was entitled to recover, whether the work was done properly or not. It was said, that, although the trustees had not taken any of the plaintiff's lands, yet as they had rendered it of less value to him in consequence of the raising of the road in some parts and lowering it in others, they were bound to render satisfaction, although the Act had not provided a compensation for a consequential damage accruing to a party, where no part of his land had been taken. But at the trial, before *Park, J.*, that learned Judge was of opinion that the action was not maintainable, if the trustees used proper care and caution, and did nothing oppressive or arbitrary; and he directed the jury to find for the plaintiff, if they were of opinion that the trustees acted arbitrarily, oppressively, or carelessly; but if they were of a different opinion, then to find for the defendant. The jury having found for the defendant, a motion was afterwards made in the Court of King's Bench for a new trial, which was refused. The reasons for the judgment of the Court may be thus stated: The act done by the trustees was an act which they had an authority under the statute to perform. Before the Act of Parliament passed, the lowering and levelling of hills had become one of the most common modes of improving the course of the public roads; therefore, the lowering of hills in a public road must be considered an act which is authorised to be done under the terms "improve and alter the course or path of the road." Then if the act done were authorised to be done, an individual who has sustained some special injury from the act done, cannot maintain an action at the common law. If, indeed, the trustees exceed the authority entrusted to them, or abuse the authority by acting arbitrarily, wantonly, or oppressively, or carelessly and negligently, then they would be liable. But the act, being in itself lawful, can only become unlawful in consequence of the mode in which it is carried into execution.

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mages, if in
the exercise
of their duty
they do not
act arbitrarily,
wantonly,
or carelessly.

Horsley v. Bell, Amb. 778.

The acting commissioners for making a brook navigable, with power to borrow money, &c. employed the plaintiff to do different parts of the work, and such of the commissioners as were present at the several meetings made orders relative thereto. Every one of them was present at some of the meetings; but no one was

Trustees' liability for works done under a navigation Act.

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present at all the meetings. The fund proving deficient, it was held that all the acting commissioners were personally liable to pay the plaintiff.

Everett v. Couch, 7 Taunt. 1.—1816.

Liability of
trustees and
officers as to
a contract for
tolls under a
former Act.

In this case the plaintiff brought an action of assumpsit against the treasurer appointed under a turnpike Act, under the following circumstances: The plaintiff was a lessee of tolls, at the time when a new Act passed, which enacted, that the then existing lease of the tolls, payable at the plaintiff's gate, should determine; and if the lessee thereof should make it appear to the trustees, that any loss would be sustained by him in consequence thereof, then any five or more trustees were authorised to make compensation for the same to the lessee. If the trustees should refuse to make such compensation, the same might be sued for in any Court of record at Westminster. And there was a clause in the Act, that, in case any person should deem himself aggrieved by any thing done by the trustees under that Act, he should sue the treasurer. The plaintiff delivered to the trustees, at their first meeting, an account of his receipts, and offered to prove a profit, for which he required compensation. The trustees thought his demand too high, and adjourned the meeting, *promising to consider of it*. The plaintiff became the highest bidder for the new lease, upon terms more beneficial than those under which he had taken the old one, and the trustees informed the plaintiff, that they considered the benefit which he would receive thereby to be a sufficient compensation for the loss he had sustained. The Court of Common Pleas held, that this action against the treasurer was not maintainable.

Per Cur.—The Act puts the treasurer in the place of the trustees; but this action supposes, that, if the Act had not substituted the treasurer, the plaintiff might have sued the entire body of trustees. The act of those trustees who were present at the meeting and promised, would not render the whole body liable to an action. We will not undertake to say, whether the legislature may not have introduced, with intention to give a remedy, a clause which proves ineffectual; but, as the case stands, there must be judgment of *nonsuit*.

Boyfield v. Porter, 13 East, 200.—1811.

Trustees' liability to satisfaction for taking materials.

The plaintiff brought *trespass* against the surveyors of the highways for entering his close, called Coy's Close. At the trial at Nisi Prius, it appeared, that there was a stone-pit in the Vicar's Close (next but one to Coy's Close, but in the opposite direction from that part of the road to which the materials for repair were to be carried), out of which there was an old car-

riage-way leading, though somewhat circuitously, to that part of the highway which was under repair; but that the defendants had forsaken the old way, and had broken up the plaintiff's close, and had made a new way over it into the highway (a), and had for that purpose cut down his fence and put up a gate. The defendants having paid twenty-four shillings into Court, under the 79th section of the Act, the question between the parties was upon the sufficiency of the amends. The defendants contended for a nonsuit, as the Act authorised the obtaining the refuse stone, and carrying it over the plaintiff's land to the road under repair, subject to a satisfaction to be *subsequently* ascertained in the method prescribed in the 29th section. The plaintiff contended that the defendants ought to have tendered an adequate compensation *before* they did any act. The learned Judge being of opinion with the defendants, nonsuited the plaintiff. Upon motion to set aside the nonsuit, the decision at *Nisi Prius* was confirmed by the Court of King's Bench. Lord *Ellenborough*, C. J.—“The convenience of the case, as well as the fair meaning of the words, requires that the satisfaction should be made subsequent and not antecedent to the damage committed: for the mere difference of the weather, whether wet or dry, during the continuance of the operation, may make great difference in the amount of the injury done to the land, and in the consequent compensation. Then, as to the sufficiency of the amends, it was not the meaning of the legislature that it should be settled at *Nisi Prius*; for the Act says, in terms, that, if the parties cannot agree, ‘Then such satisfaction and recompense shall be settled and ascertained by order of one or more justice or justices of the peace of the limit where such land or ground shall lie.’ The parties, therefore, have no choice of any other tribunal to settle the amends in any case within the Act.”

It seems, that, if in the above case the plaintiff had proceeded against the surveyors, for wantonly trespassing over his land, inasmuch as there existed an old road, which was sufficient for the purpose required, he would have succeeded. For Lord *Ellenborough* said, “If, indeed, the trespass be committed maliciously, and not for the purposes of the Act, it is not a case within it, and the plaintiff would be entitled to recover damages by the verdict of a jury. But that was not the case submitted to the learned Judge at the trial.” And per *Bayley*, J.—“Where there is a subsisting road, by which the materials may be carried, the surveyors are not wantonly to deviate from that, and to make a new road for the purpose; but, where there was not a convenient road before, the Act authorises the making of a new road.”

(a) The new way appeared, by a map, to be about two-thirds nearer than the old way.

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Trustees' liability to repay money advanced for the use of the road.

Parrott v. Eyre, 10 Bing. 283.—1834.

The defendant was one of the trustees of the Marylebone and Finchley road; the plaintiff treasurer of the road, and a partner in the firm of Scott & Co., the bankers of the road. In July, 1829, after a considerable sum had been borrowed on a mortgage of the tolls, in the manner prescribed by 3 G. 4, c. 126, s. 81, the trustees, defendant being their chairman, requested the plaintiff to advance the trust 1000*l.* at 5*l.* per cent. interest, to be placed to the credit of the trustees' account with the defendant as treasurer, and at the same time sent him a copy of the local Act relating to the road. The plaintiff consented to advance the money on receiving a minute of a resolution, signed by the chairman, that the treasurer should be requested to make a temporary advance of 1000*l.* at 5*l.* per cent. A minute of a resolution to that effect, signed by the chairman, was sent to the plaintiff, who then apprised the trustees' clerk that 1000*l.* had been placed to the credit of the trustees' account. In August, 1829, the plaintiff advanced another 1000*l.* in the same way, and on the same terms. For these two sums he received no security in the way of bond or promissory note from any of the trustees; and the next annual account of the revenue and expenditure of the road, transmitted by the trustees to the clerk of the peace for the county, pursuant to 3 G. 4, c. 126, s. 78, shewed clearly that they were temporary advances, for the repayment of which the tolls had not been pledged by way of mortgage. The interest, however, was, in 1830, pursuant to a resolution of the trustees, paid out of the funds of the road by Scott & Co., who, as being bankers of the road, had always a balance in hand. In 1831 and 1832, the bankers, without any such formal resolution, debited the funds of the road with the payment of this interest. In October, 1830, April, 1831, and February, 1832, the firm of Scott & Co. were applied to for further advances, but refused to make them without security; and the defendant and his brothers, upon those occasions, signed joint and several promissory notes for 1500*l.*, 500*l.*, and 600*l.*, the defendant having considerable property bordering on the road, and being personally interested in its prosperity. These notes were afterwards duly paid, and the present action was brought to recover the 2000*l.* advanced by the plaintiff in 1829. The Marylebone and Finchley local road Act, 7 G. 4, applies the general turnpike Acts, except as therein altered, to the road in question, and provides, "that, out of the tolls and other monies which shall be raised by virtue of this Act, the said trustees shall, in the first place, and in preference to all other disbursements whatever, pay and discharge all costs and expenses relative to the procuring and passing of this Act, and of all surveys, plans, estimates, and other expenses incident thereto, and the remainder of all such monies shall, from time to time, be applied in repaying any money which may be borrowed on the credit of this Act, and the interest to grow due thereon, and in

making, rendering commodious, improving, and maintaining in repair the said road and branch, and in otherwise carrying this Act into execution."

On the trial it was contended, on the part of the defendant, that the money had been lent on the security of the road; and that, at all events, by the 7 & 8 G. 4, c. 24, s. 3, the defendant was protected from personal responsibility. *Tindal*, C. J., left it to the jury to determine whether the money had been advanced on the personal security of the defendant, or on the security of the road; and a verdict having been found for the plaintiff, a rule for a new trial was obtained, but subsequently discharged on argument.

Alderson, J.—Upon the first point, the jury have decided that the defendant made himself personally responsible to the plaintiff, and the Court is not disposed to quarrel with that finding. The second question is, whether, supposing the defendant engaged to be personally responsible, it was competent to him, by law, to incur such responsibility. With respect to this, it has been contended, that, under the operation of the 3 G. 4, c. 126, the 4 G. 4, c. 95, and 7 & 8 G. 4, c. 24, s. 3, he is exempted from all personal responsibility. Now, the 3 G. 4, c. 126, does not apply to the case before the Court, nor does the 4 G. 4, c. 95; for, under those Acts, trustees are only exonerated from personal responsibility in consequence of having signed any mortgage or other security "to be made by virtue or in pursuance of any Act for making or maintaining any turnpike road." The only remaining Act is the 7 & 8 G. 4, c. 24, s. 3; and that is the section which, it is said, gives the trustee a general irresponsibility. "That no trustee shall be personally subject or liable to be charged (except as hereinbefore mentioned) with the payment of any sum or sums of money laid out or expended in or towards the making, repairing, or altering any turnpike road; nor shall execution issue against the goods and chattels of any trustee, by reason of his having acted as such trustee, or having signed, or authorised, or directed any contract or security to be entered into relating to any such road, unless in such contract or security such trustees shall have, in express words, rendered himself so personally liable." And it is contended that, under this section, the defendant is not liable, because he has not bound himself by express words. This would be a strong construction, if it were the true one; but it is not the true construction. The 3rd section must be construed with reference to the 2nd; that section applies to cases where money has been improperly laid out upon a road, for which expenditure a trustee is made liable to his co-trustees. Then comes the 3rd section, which enacts, that a trustee shall not be personally liable for the payment of money laid out on a road, except as before mentioned. After which follows the provision, that no *execution* shall issue against his goods by reason of his having acted as trustee, except where he has rendered himself liable by express words. The situation of trustees before this Act explains what it was the legislature apprehended, and appre-

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hended without reason. By the original statute of 3 G. 4, the trustees were liable to an action for contracts in respect of the road, and the consequences of suit might seem to follow: judgment and execution against the trustee, taking his goods, and leaving him to indemnify himself from the fund of the road. This Act was passed to prevent such a proceeding; and provided, that, though judgment might pass against him, no execution should issue in respect of any security on which he had not made himself expressly liable. This Act was passed before the decision in *Wormwell v. Hailstone* (see post, p. 380) and would, probably, have been found unnecessary, if that decision had occurred before. The statutes which have been referred to, therefore, have nothing to do with the present case, which is one of ordinary personal responsibility.

Harris v. Baker, 4 M. & Sel. 27.

Where trustees may be indicted for neglect of duty, although the clerk be not liable to action.

The trustees of a public road were empowered and required by an Act of Parliament to place lamps along the road if they should think necessary, and to make contracts for the cleansing of the road, and to take a night toll for the purpose of enabling them to light and watch the same. The highway had been cleansed, and the scrapings had been left in round heaps on both sides of the road. One evening, after it was dark, there being no lamps by the road side, the plaintiff's wife, having occasion to cross the way, in her passage fell over one of these heaps and broke her arm. And it was held by the Court of King's Bench, that the clerk to the trustees was not liable to an action under the above circumstances. Per Lord *Ellenborough*, C. J.—“If, by omitting to put up lamps where it is necessary, the trustees are guilty of a breach of public duty, they may be indicted. But to hold that every trustee of a road is liable in damages for such an accident as this, would, I conceive, be going further than any case warrants.”

Jones v. Bird, 5 B. & Ald. 837.—1822.

Persons employed in public works are required to act in a skilful manner.

The plaintiff brought his action against the defendants, who were employed under the commissioners of sewers. It appeared that the sewer, which it was necessary to repair, passed close to five houses adjoining to that belonging to the plaintiff, and that a stack of chimneys belonging to one of those houses was built upon the arch of the sewer. In the execution of the work, it became necessary to rebuild this arch; and, in order to support the chimneys in the mean time, a transum and two upright posts were placed under them in order to support them, but without success; the chimneys fell; and, in consequence of their fall, the adjoining houses, including the plaintiff's house, fell also. There was no specific notice given to the owner of the house to which

the chimneys belonged, of their dangerous state, or that it would be necessary for him to take them down. But there was a general notice to the inhabitants to secure their houses while the sewer was repairing. The jury, at the trial, were of opinion, that the defendants had conducted themselves negligently in their execution of the work intrusted to them, and accordingly found a verdict for the plaintiff, which verdict the Court of King's Bench refused to disturb. Per *Bayley, J.*—"The defendants were bound to conduct themselves in a skilful manner." And per *Best, J.*—"Here, too, the action was brought against the parties who negligently executed, and not against the party giving, the order, as in *Sutton v. Clarke.*" From this observation it may be inferred, that, in the case alluded to, the surveyor would have been considered liable, although the trustees were held not to be responsible.

Pursuant to the local Act, 52 G. 3, c. 48, a notice of action had been given, signed by the defendant's attorney, stating that the action was brought—"For that the defendants did, by themselves, their servants or workmen, make, alter, cut, dig, work, and enlarge certain sewers, gutters, ditches, and works, then being and running under, through, or adjoining or near unto a certain messuage or tenement, shop and premises of the plaintiff, situate and being, &c. in the tenure or occupation of E. H., his tenant, in so negligent, incautious, unskilful, improvident, and improper a manner, that the said messuage or tenement, shop and premises, or the greater part thereof, fell and were greatly damaged, weakened, and destroyed, and rendered unfit and dangerous for use or habitation:" and this notice was held to be a good foundation for an action on the case for the damages. The Court said that the notice of action ought not to be construed with great strictness, its object being merely to inform the defendants substantially of the ground of complaint, but not of the mode or manner in which the injury has been sustained.

Hall v. Smith and Others, 2 Bing. 156.

This was an action brought against the clerks to certain commissioners for lighting, paving, and watching the town of Birmingham, who were authorised to sue and be sued in the names of their treasurer or clerk; and also against the surveyor and contractor employed by them, and a labourer who was employed by the contractor. It appeared that the defendants dug a deep ditch in a certain street, placed a quantity of rubbish near the same, and left it at night, without any guard, fence, light, or signal; and that the plaintiff, not knowing thereof, fell into the ditch with great force, whilst riding across the street, whereby he broke his thigh, and his horse was much injured. On the trial, the jury found a verdict for the labourer, and against all the other defendants. Upon motion, the Court of Common Pleas set aside the verdict as against the clerks to the commissioners, but con-

Although the trustees may not be liable for acts done by persons employed by them, such persons may themselves be liable to action.

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firmed it as against the surveyor and contractor. *Best, C. J.*, observed, that, "As to the surveyor and contractor, it was admitted that the verdict found against them must stand. The question to be decided was, whether the clerks to the commissioners were to have a verdict entered for them. The action is not maintainable against these defendants, unless it could have been supported against the commissioners. Now, if commissioners under an Act of Parliament order something to be done which is not within the scope of their authority, or are themselves guilty of negligence in doing that which they are empowered to do, they render themselves liable to an action; but they are not answerable for the misconduct of such as they are obliged to employ. If the doctrine of *respondeat superior* were applied to such commissioners, who would be hardy enough to undertake any of those various offices by which much valuable yet unpaid service is rendered to the country? The maxim of *respondeat superior* is bottomed on this principle, that he who expects to derive advantage from an act which is done by another for him, must answer for any injury which a third person may sustain from it. The commissioners here had authority to make the trench which occasioned the damage to the plaintiff; and they are not answerable for the negligent execution of an order properly given."

Wormwell v. Hailstone, 6 Bing. 668, 4 Moo. & P. 512.—1830.

The effects of a clerk to the trustees not liable to be taken in execution, although he may lawfully be sued instead of the trustees.

This was an action against the clerk of trustees of a turnpike road, brought under the provisions of 3 G. 4, c. 126, s. 74; 4 G. 4, c. 95, s. 61; 7 & 8 G. 4, c. 24, s. 2, for work and labour done, and materials procured, by the plaintiff for the trustees. A verdict was given for the plaintiff, and an execution issued; but the Court, on consideration, restrained the sheriff from executing the writ against the personal effects of the clerk.

Tindal, C. J.—This is an application to the Court to set aside the writ of *fi. fa.* which has been issued upon the judgment obtained against the defendant, on the ground that the statute 3 G. 4, c. 126, s. 74, which enables the plaintiff to sue the defendant as clerk to the trustees of the turnpike road, does not authorise any execution against either the person or the property of the defendant.

The clause in question appears to have been introduced, from the difficulty, or indeed impracticability, of carrying to a successful result any action, either by or against the whole of the very numerous and fluctuating body of which the trustees of a turnpike road generally consist. The clause, therefore, empowers, but does not compel, the trustees to sue or be sued in the name or names of any one of such trustees, or of their clerk or clerks for the time being, leaving it open to any creditor, if he shall think proper, to sue by the ordinary course of proceeding against any number of the trustees personally, where the nature of the

transaction, or the form of the security or contract, gives any ground of action against those particular and individual trustees.

In the latter case, the action would have been attended with the ordinary consequences of personal liability on the part of the defendant, had not a later statute, the 7 & 8 G. 4, c. 24, s. 3, taken away the personal liability of the trustees in every case, unless where the trustees have in the contract or security, in express words, rendered themselves personally liable.

A provision of this nature, releasing the trustees from liability when the action is brought against them, although they may be the very parties to the contract or security on which the action is brought, affords a strong presumption that it could not be intended the clerk to the trustees should be personally liable, when the creditor sues the trustees in the name of their clerk. It would be very singular that the creditor of the trustees should have his election to satisfy his demand either out of the trust funds or the personal means of the clerk of the trustees, according to the form of the action he thought proper to bring.

But we think, under the proper construction of the 74th section, the clerk is not personally liable to the consequences of an action. The power to sue the trustees in the name of their clerk is, in other words, the power to make him the *nominal* defendant: the enactment, that the suit shall not abate by the death or removal of the clerk, but that the clerk for the time being shall always be deemed to be the defendant, points again to the same distinction between a real and nominal defendant; and, indeed, it would open the door to inextricable confusion and difficulty if the clerk for the time being were personally to be looked to for satisfaction of the judgment. Suppose the clerk, in whose name the action was defended, to die, or be removed after judgment and before satisfaction, it would seem very unreasonable that his successor, who was no party to the defence, should be liable to pay the whole; or, on the other hand, that the executors of the former clerk, who have no concern whatever with the trust funds, should be liable to the demand out of the testator's assets. But the main ground upon which we collect the intention of the legislature is this: the only provision for reimbursement of the clerk is a reimbursement of all the costs, charges, and expenses which he has been put to by reason of being made defendant.

The ordinary meaning of these words will not comprehend the debt or damages recovered, and this must give at the same time the measure of the clerk's personal liability; for it cannot be supposed that he is liable to either the debt or damages recovered, where there is no express provision for repaying himself.

It is asked, How are the debt or damages to be recovered in this action, if the clerk is not liable? This Act, undoubtedly, makes no direct provision, as many others of a similar nature do, upon this subject. See the West India Dock Act, 39 G. 3, c. 69, s. 184, and the London Dock Act, 39 & 40 G. 3, c. 4, s. 150. But there can be no doubt but that the funds of the trustees may be made answerable for the amount ascertained in the action, in case of a

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refusal to apply them, either by a *mandamus* or a bill in equity. It is sufficient, however, for the present application, to decide, that we think the Act does not authorise a personal execution against the clerk; and therefore we make a rule, not for setting aside this writ of execution, but for restraining the sheriff from executing it against the personal effects of the clerk.

Curling v. Johnson, 10 Bing. 89; 3 M. & Scott, 498.—1834.

Question as
to the ex-
penses of
contracts.

The plaintiff, clerk to commissioners of paving, drew up a contract for paving, of which contract defendant, the contractor, was, by agreement, to pay the expense. Defendant offered to execute the contract, but refused to pay plaintiff's charges, as unreasonable. The plaintiff refused to allow the contract to be executed, until his charges were paid. Under an Act authorising the commissioners to sue by their clerk, it was held, that he could not sue as such clerk for these charges.

Cane v. Chapman, 5 A. & E. 647; 1 Nev. & P. 104.—1836.

Action
against clerk
for breach of
duty by com-
missioners.

A paving Act enacted, that the commissioners might sue and be sued *for or concerning anything which should be done by virtue or in pursuance of the Act*, in the name of their clerk. They were empowered to raise money by rates; and it was provided, that any person might advance money to them, for the purpose of the Act, in the purchase of annuities, to be payable and paid by the commissioners out of the money arising from the rates; and the Act prescribed the form of the grant of such annuities. The plaintiff advanced a sum of money to the commissioners for the purchase of an annuity, and they, by a grant made according to the Act, granted to him an annuity out of the rates. The plaintiff was held entitled to maintain an action on the case against the clerk, as for a breach of duty by the commissioners, in non-payment of a quarterly payment of the annuity, it being alleged that they held in their hands, out of the rates, money more than enough to satisfy it, whereupon it became their duty to pay it, but they had not paid it. And another section of the Act, which provided that no suit should be commenced *for anything done* in pursuance of the Act, until after a certain notice given, was held not to be applicable to this case. The Court held also, that the declaration in the action was not bad in substance, for want of an averment that the money was advanced for the purposes of the Act, or that the commissioners had received money enough to satisfy all annuitants.

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Beckett and Others v. Wilson 10 Law J., C. P., 325.—1841.

Messrs. B. & Co., the plaintiffs, in their capacity of bankers to a turnpike trust, made advances to the trust on cheques drawn payable to the treasurer, and signed by the clerks to the trustees. B., one of the plaintiffs, was the treasurer; W., the defendant, was one of the trustees, was in the habit of attending their meetings, and took an active part in the concerns of the road. The defendant was held liable in an action of assumpsit for the amount of the advance made to the trust; and this, although C., another of the plaintiffs, was also one of the trustees.

Personal liability of trustees for advances by bankers.

Allen v. Hayward, 7 Q. B. 960.—1846.

By an Act constituting the "Dartford and Crayford Navigation," and appointing commissioners thereof, it was enacted, that no act of the commissioners should be valid unless done at a meeting of commissioners, at which not less than three should be present. By another section, it was provided, that the commissioners should and might sue and be sued in the name of their clerk. Resolutions were passed by the commissioners, that their engineer should make specifications with a view to a contract for the performance of certain works; that B. should be written to on the subject; and that B.'s tender should be accepted. At the meeting at which the resolution for accepting the tender passed, seven commissioners were present; but three only were named in the contract as parties to it, and by none of these was it signed. The work was done by B. under the contract; and in the course of doing it a bank was erected of insufficient materials, whereby water was prematurely admitted, which sunk the bank, and went over it into the plaintiff's land. The Court held, that this contract, and the work done under it, were acts done by the commissioners, for which they might properly be sued in the name of their clerk; but that the contractor was not their servant, so as to render them liable for his misfeasance.

Liability of trustees for acts of contractor.

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Rea v. Bagshaw, 7 T. R. 363.—1797.

Under a turnpike Act, the trustees had power to turn roads through private grounds, making satisfaction to the owners, and, if they could not agree, they were enabled on giving notice to the owners to summon a jury to ascertain the damages, and to order such sum so ascertained to be paid to the owners. The Court of King's Bench quashed an inquisition of the jury, and an order

In taking lands without owners' consent, the provisions of the Act to be strictly complied with.

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of the trustees under this Act, because it did not appear on the face of the proceedings that any notice had been given to the owners of the land. The Court said, that notice to the parties interested was the foundation of the whole proceedings below, and that therefore it should have been stated; for, if no notice were given, the trustees had no jurisdiction.

Lister v. Lobley, 7 A. & E. 124.—1837.

Compensa-
tion to land-
owners.

By a turnpike Act, the trustees were authorised to enter upon and take certain lands, and to pull down certain houses, buildings, &c. "making or tendering satisfaction to the *owners or proprietors* of all private lands, houses, buildings, &c." so taken, "for any loss or damage they may sustain thereby." The words "owners or proprietors" were to include not only owners of the fee simple in the lands and buildings, but also lessees of the same for years. But it was held, that the trustees were not bound to make or tender satisfaction *before or at the time* of entering upon and taking the lands or pulling down the houses." On the latter point, Lord *Denman* said—"The amount of compensation cannot, generally, be ascertained till the work is done. The effect of the words is, that they shall not do it without being liable to make compensation."

Peters v. Clarkson, 7 Man. & G. 548.—1844.

The Highway Act, 5 & 6 W. 4, c. 50, s. 67, empowers surveyors to make drains on lands adjoining any highway, *upon paying* the owner for the damages sustained thereby, to be settled and paid as the damages for getting materials in inclosed land are therein directed to be settled and paid—that is, being settled and ascertained by order of justices at a special session for the highways. It was held, first (as in *Lister v. Lobley*), that tender of satisfaction for damage done in making a drain was not a condition precedent to the right of entry on the land; secondly, that the amount of the satisfaction could only be ascertained by the justices at the special sessions; and thirdly, that even if it was the duty of the surveyor to apply at a special session for that purpose, no time was limited for his doing so, and that notice of action for the damage, given under sect. 109 of the Act, could not create such a limitation.

De Beauvoir v. Welch, 7 B. & C. 266; 1 Man. & R. 81, 267.
—1827.

Trustees
have power

In this case the question was, whether, under the 3 G. 4, c. 126, s. 86, the trustees of a turnpike road had the power to stop up an

old road, leading to a church, &c. and give it up to the owner of adjoining land, the new road not leading immediately to the same place.

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Bayley, J.—This was an action of trespass, to which there was a plea of a public right of way. The locus in quo at one time had been part of a public highway. The question was, if it had or had not been properly stopped up, so as to destroy the right of the public, and so as to vest the right of possession in the plaintiff? The case turned on the construction of the 3 G. 4, c. 126, s. 86. It was insisted that the trustees had no right to make the order for stopping up the road in question, because the old road led to a church, mill, village, &c., to which the new road did not immediately lead. Section 86, provides, that, after such new road shall be completed, "the lands or grounds constituting any former roads or road, or so much and such part thereof as in the judgment of the trustees may thereby become useless or unnecessary, shall or may be stopped up and discontinued as public highways (unless leading over some moor, heath, common, uncultivated land, or waste ground, or to some church, mill, village, town, or place, lands or tenements, to which such new road or roads doth not or do not immediately lead, and which may therefore be deemed proper to be kept open either as a public or private way or ways, for the use of any inhabitant at large or any individual or individuals.)" The whole question turns on this exception. If it takes away from the commissioners the power to stop up every road of the description there specified, then they had no jurisdiction to stop up the road in question. But if it does not take away from them the power, but only authorises them to leave open roads of that description when in their discretion they shall think fit, then the order in question will be a valid order. Undoubtedly, the trustees would have had no jurisdiction to stop up the road in question, if the early part of the excepting clause had stood by itself. But upon a careful consideration of the whole of this clause, it seems to me to be clear that the legislature intended to give the commissioners a discretionary power either to stop up or leave open those roads as they might think fit. The clause contains two branches: the first points out the description of the roads to which the power of the trustees may be applied; the second leaves it to the discretion of the trustees to apply it or not; and it even gives them a remarkable power of converting that which had previously been a public into a private way. If the first branch of the exception had stood by itself, it would take away from the commissioners all power of stopping up any road leading over a moor, heath, &c., or to a mill, church, &c. It would be singular, however, that the commissioners should be precluded from stopping up any old road leading over a moor, heath, &c., when the new road might perhaps open in a new direction over that very moor, heath, &c., and the termini might be the same, though the line of direction might be somewhat different from the old road. It would be singular, too, that they should be precluded from stopping up an old road leading to a

to stop up an
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ing to a
church, &c.

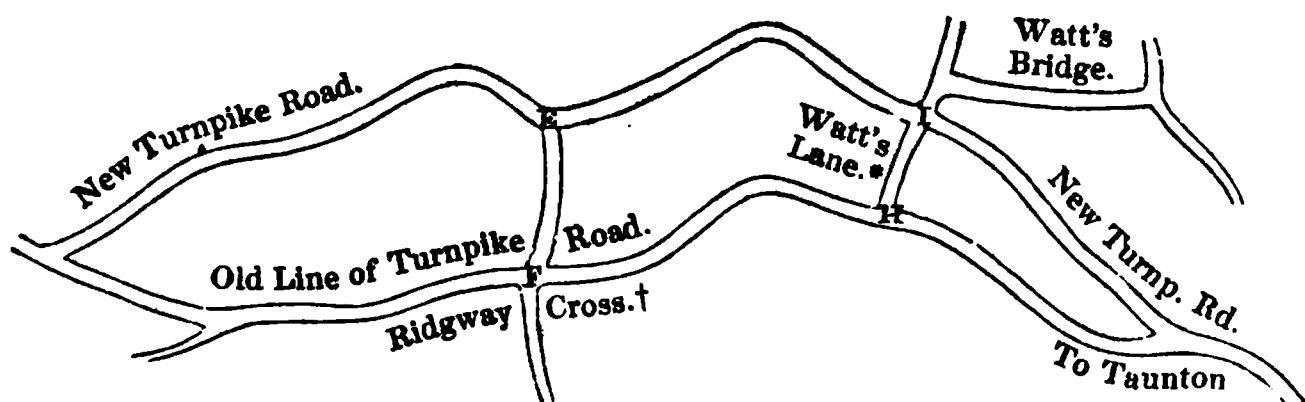
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church, mill, &c., in every case where the new road did not lead immediately to such church or mill, though it might lead to some other road which would perhaps give a good access to the church, mill, &c. It seems to me that the latter words of the clause were introduced to qualify the more general expressions used in the former sentence, and to point out to the trustees in what instances that power might be exercised, but leaving it to their discretion to exercise it or not as they might think proper. This is the only reasonable construction of the clause. The clause says, first, that the road shall be stopped up, unless it be a road of a particular description; and, secondly, unless it be a road which, on account of its leading to that heath, moor, &c., or to that mill, church, &c. *may be deemed proper* to be kept open as a public or a private way. The latter words import that a discretion is to be exercised. To be exercised by whom? Clearly by the trustees and commissioners. If we were to hold that it was only to be exercised by a judge or jury, it would lead to great litigation, for different juries might form very different judgments as to the propriety of continuing the road open. Besides, the old road or roads are to be kept open, either as a public or private way or ways. If it be deemed proper that an old public way shall be a private way, the public rights are at an end; and it will become a way to be used only by particular individuals. But unless the commissioners have this power of making it a private way, how can it become such by law? There is no legal mode of converting that which has been a public way into a private way, except by Act of Parliament. It seems to me, therefore, that there is an obligation on the commissioners, when they are dealing with a road of this description, if they in their judgment shall think fit that it shall continue a public road, to say so in express terms on the face of their order. The true construction of this clause is, that the road is to be stopped up, unless, first, it is a road of one of the descriptions specified in the Act; and, secondly, unless the trustees deem it proper to be kept open as a public or private road. In this case the commissioners have made an order for stopping up and discontinuing, but have made no provision for keeping it up, either as a public or a private road; and, as it seems to me, the consequence is, that it has ceased to be a public road, and that the justification, therefore, is not made out. The statute 3 Geo. 4, c. 126, gives no appeal, and, therefore, under that statute the judgment of the trustees or commissioners (if they were the persons to exercise a judgment on the subject) would be final and conclusive. But that defect, if it be one, is remedied by the stat. 4 G. 4, c. 95, s. 87. For these reasons, it appears to me that the locus in quo had ceased to be a public way; and that, as the right of possession and right of property were vested in the plaintiff, he is entitled to recover.

Rea v. Winter, 8 B. & C. 785.—1828.

Two justices had made an order for diverting and turning a road, substituting for the old highway a new road, which passed over a road described in the order as a new line of turnpike road, and the order was confirmed on appeal, subject to the opinion of the Court, whether the order could be legally made under the Highway Act, 55 G. 3, inasmuch as the intended new road did not either commence or terminate at the same points as the road stopped up, the distance between the points, I. and E. [see the plan below,] being 1154 yards, and the distance between the points H. and F. being 1063 yards; and also as the highway from F. to H. was one of the roads included in a local turnpike road Act. The observations made by the Court in this case, respecting the powers of turnpike trustees, make it necessary to state the case at some length.

As to the right of trustees to stop up a road and make a permanent highway.



* Otherwise Sandy Lane.

† Otherwise Ash Cross.

It was argued, in support of the order of sessions, that as the new highway from E. to F., together with the pre-existing road from I. to E., carried the public to and from the same destination as the old highway from I. to H., together with the other old highway from H. to F., the order was legally made; and the case of *De Ponthieu v. Pennyfeather*, 5 Taunt. 634, was cited to show that it is not necessary that the diversion of a highway should be effected wholly by a new highway given by the order.

Bayley, J.—The order of justices substitutes the road E. F. for I. H. Suppose a person desirous of going from I. to F., he must go by I. E. F.; but the order describes the road from I. to E. to be a new turnpike road. It was probably made so for a term of years; and then there is nothing to secure to the public the right of using that road after the expiration of that term of years. The public have a permanent right over the whole line from I. by E. to F. In that portion of it which extends from F. to E., that right is secured to them by this order of magistrates. In the remaining portion from E. to I. (though the fact be not

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good and permanent a right over the whole of the new substituted road as they had over the old. Now as by the 13 G. 3, c. 78, s. 17, justices have power to stop up an old highway only when the *new highway* shall be made, I think it ought to have been shewn on the face of the order, or of the case, that the whole of the new road, substituted for the old one, was a highway over which the public have as good and permanent a right as they had over the old one. By 13 G. 3, c. 78, s. 16, the ground purchased for the new road on payment of the purchase money is to become a public highway. The road from I. to H., therefore, would become a highway in this case by virtue of that Act. There is nothing to shew that the road from I. to E., which is part of the newly substituted road, has ever become a permanent public highway. It is incumbent on the parties who seek to avail themselves of the powers given by this Act of Parliament, to shew that the public have a permanent right to pass over the new line of turnpike road from I. to E. Now, that is not stated on the face of the order, nor is it shewn that it was made a public road under the powers given to the commissioners under section 88 of the General Turnpike Act. And assuming that a turnpike road may by user become a public highway, it is not shewn that there has been any user of this road by the public. As it does not, therefore, appear that the magistrates had jurisdiction to stop up the road in question, I think that the order of sessions ought to be quashed.—
Order of Sessions quashed.

Allnutt v. Pott, 1 B. & Ad. 302; 3 Man. & R. 439.—1830.

An ex-
change, &c.
valid without
conveyance.

In this case an exchange between the trustees of a turnpike road and a person entitled to land in his own right was declared valid under 3 G. 4, c. 126, s. 84, without a conveyance; see ante, p. 72. The order for exchanging the land, which seems to have been copied from that in *De Beauvoir v. Welch*, 7 B. & C. 266, will be found in p. 337, ante. And it was argued, that there had been no dedication to the public. Lord *Tenterden*, C. J.—The question is, whether, when a new road is made over the land of a person sui juris, with his consent, it being intended that the recompense shall be given, not by payment, but by exchange, such road can be effectually dedicated to the public without an actual conveyance? It is clear, that, where an agreement takes place, and money is paid accordingly, there need be no conveyance; nor is it necessary where the owner refuses to treat, and a jury assesses the compensation. The statute only mentions a conveyance in cases where the commissioners of roads have to treat with persons incapacitated from agreeing at common law, or acting in trust for others, in which instances it is very reasonably provided that a conveyance shall be executed, for the sake of certainty, and as evidence against the cestui que trust or other party represented. As, then, in the case of a person sui juris agreeing for the sale of lands a conveyance is not necessary, I do not see why it should

be otherwise where such person exchanges lands, and manifests his consent to the bargain by suffering the road to be made over his premises. I am of opinion, therefore, that this new road was effectually dedicated to the public in place of the old, and that the action was maintainable. *Bayley, J., and Littledale, J., concurred.*

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Loveridge v. Hodsoll, 2 B. & Ad. 602.—1831.

The question was, whether the commissioners, by 57 G. 3, c. 29, the Metropolitan Paving Act, had a right to bring Haverstock Hill, part of a turnpike road, within their jurisdiction, for the purposes of lighting and watching, and to make a rate for these purposes on persons resident there, notwithstanding a clause in the Act exempting turnpike roads from its operation. The rate was for lighting and watching the *footways*, and it was contended, that footways are no part of the turnpike road; but the Court held that they are. *Parke, J.*—Section 3 of the General Turnpike Act, 3 G. 4, c. 126, authorises the trustees or commissioners under that Act to make and repair causeways for the use of *foot passengers*, upon or on the sides of the turnpike roads, as they shall think proper; and, by sect. 112, they are not to lay down, continue, repair, or maintain any *pavement*, or any paved or pitched causeway or *footway*, in, upon, or at the side of any turnpike road within any town, village, or hamlet. If the commissioners acting under the 57 G. 3, c. 29, take this footpath into their jurisdiction, they take from the trustees under the General Turnpike Act the option given them of repairing the footpaths.

The foot-
paths are
part of the
turnpike
road.

Rex v. Wright, 3 B. & Ad. 681.—1832.

This was an indictment for encroaching on a highway, on which it was held, that, although the commissioners under an inclosure Act had exceeded their authority in awarding that private roads should be repaired by the township, it was a question for the jury, upon the evidence, whether the road had been dedicated to and adopted by the public. In this case an observation was made, which appears equally applicable to turnpike roads. The width of the road was sixty feet, but the part ordinarily used as a carriage road was considerably less, and the encroachment was upon the sides of the road, but within the sixty feet. Lord *Tenterden, C. J.*—I am strongly of opinion, when I see a space of fifty or sixty feet through which a road passes, between inclosures, set out under an Act of Parliament, that, unless the contrary be shewn, the public are entitled to the whole of that space, although perhaps, from economy, the whole may not have been kept in repair. If it were once held that only the middle part, which carriages ordinarily run upon, was the road, you might, by

The public
entitled to
the whole
space be-
tween the
hedges.

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degrees, inclose up to it, so that there would not be room left for two carriages to pass. The space at the sides is also necessary to afford the benefit of air and sun. If trees and hedges might be brought close up to the part actually used as the road, it could not be kept sound.

Davison v. Gill, 1 East, 69.—1800.

Soil of the
road not
vested in the
trustees.

Lord *Kenyon* held that the trustees of a turnpike road had not the soil thereof vested in them so as to be enabled to give a sufficient consent to the turning of a footpath into their highway. His Lordship observed, "the soil was not vested in them, but remained in the persons who were entitled to it before the Act passed by which they were appointed. The trustees have only the control of the highway." In this case another point was also decided, which is stated ante, p. 135, n. (e).

Doe d. Pring v. Pearsey, 7 B. & C. 304; 9 D. & R. 908.—1827.

The prima
facie pre-
sumption is,
that waste
land adjoining
a turn-
pike road,
and the soil
to the mid-
dle, belongs
to the owner
of the ad-
joining land,
whether free-
hold, copy-
hold, or
leasehold.

The question in this case was, to whom a slip of waste land adjoining a turnpike road belonged, an ejectment having been brought by the owner of the adjoining land to recover possession of a cottage which another person had built on it. *Bayley, J.*—It is very desirable that there should be one certain and definite rule applicable to all cases of this description. Now, it is prima facie presumption that waste lands on the sides, and the soil to the middle of a highway, belong to the owner of the adjoining freehold land. The rule is founded on a supposition that the proprietor of the adjoining land at some former period gave up to the public for passage all the land between his inclosure and the middle of the road. I think that rule applies not only to freehold but to copyhold lands also. There was no evidence to shew when the road was first made, but it was a turnpike road. If the road existed at the time when the copyhold was first granted, viz. from time immemorial, the right of property in the road and the waste adjoining might, in that case, have remained in the land. But if the road were taken out of the land after the copyhold was granted, then the presumption would be that the property in the road and waste adjoining was in the copyholder. Now I think we ought not to presume that the road in question was made before the time of legal memory; the probability is, that it was made not long since; and if the road was made within the time of legal memory, then the prima facie presumption is, that the waste land adjoining the road belonged to the copyhold tenant of the land next adjoining, and not to the lord.

Holroyd, J.—The rule applies equally, whether the party occupying the adjoining land be a freeholder, leaseholder, or copyholder. And see *Steel v. Prickett*, 2 Stark. N. P. C. 463.

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Rex v. St. George, Hanover Square, 3 Camp. 222.—1812.

The 6 Geo. 4, c. 64, enacted, that the paving of a particular street should be under the care of commissioners, and provided a fund to be applied to that purpose; and another statute which was passed for paving the streets of the parish, contained a clause that it should not extend to the particular street. The Court were of opinion that the inhabitants of the parish were not exempted from their common law liability to keep that street in repair; that the duty of repairing might be imposed upon others, and the parish be still liable; and that the parish were under the obligation in the first instance of seeing that the street was properly paved, and might seek a remedy over against the commissioners. And see the observations in *Bussey v. Storey*, post, p. 410.

The parish in the first instance liable to repair roads.

Rex v. Hepworth,

Tried before *Hullock, B.*, at the York Lent Assizes, 1829.

An indictment charged a township with non-repair of a highway; and it appeared in evidence that the road in question was begun six years before, under a local turnpike Act; that the trustees had finished it all but about 300 yards at one end of the line, and one mile at the other (both out of the township), fenced what they had made, put up two turnpike roads, and taken toll; that the road was convenient, much used by the public, and leading at each end into old, open, and public highways; but it was held by *Hullock, B.*, that the indictment was premature, the trustees not having finished their road according to the Act of Parliament, and, consequently, that it was no public highway.

But a turnpike road must be completed before the parish can be made liable to repair it.

Rex v. Cumberworth, 3 B. & Ad. 108.—1832.

Where by an Act of Parliament trustees are authorised to make a road from one point to another, the making of the entire road is a condition precedent to any part becoming a highway repairable by the public; and therefore, where trustees empowered by Act of Parliament to make a road from A. to B. (being in length twelve miles), had completed eleven miles and a half of such road to a point where it intersected a public highway, it was held that the district in which the part so completed lay, was not bound to repair it.

Similar case.

Lord *Tenterden, C. J.*—This case is not distinguishable in fact from *Rex v. Hepworth*. If there had been no decision on the subject, I should have entertained some doubts. It seems to me,

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however, to be a wholesome doctrine, that trustees, who are empowered to make a road from one place to another, should be bound to make the whole of that road before they throw on the public the burthen of repairing any part of it. If that were not so, they might, when empowered to make a road extending several miles, make a mile of road, and then throw upon the parish or district the burthen of repairing, though the part of the road so made might be of no use to the public. Turnpike roads often produce great public burthens, which ought not to be extended by implication. Besides, here there was no act of acquiescence by the defendants, and according to *Rex v. St. Benedict*, 4 B. & A. 447, and *Rex v. Mellor*, 1 B. & Ad. 32, some such act was necessary at all events to make them liable.

Littledale and Taunton, JJ., also thought there ought to be some acquiescence by the parish; but *Patteson, J.*, said he was disposed to decide the case rather on the principle of non-completion than on the necessity of adoption, "although there is some authority for that."—[See also *Reg. v. Edge Lane*, 4 Ad. & E. 723; *Reg. v. Cumberworth*, Id. 731.]

Wheeler v. Cooper, 1 Blac. Rep. 603.—1766.

The parish held not bound to repair a turnpike road turned into it.

In this case, the trustees of a turnpike road had, by virtue of their powers, altered a road, and carried it into another parish.

Lord *Mansfield, C. J.*, held, that the roads being by the Act to be repaired, in the same manner and by the same persons as were formerly used to repair them, the inhabitants of the new parish could not be obliged to repair; but whether the inhabitants of the parish through which the old road went were liable to the repair of the new part, he gave no opinion, but rather inclined that they should not.

Rex v. Mellor, 1 B. & Ad. 32.—1830.

It has been held, that the parish are not bound to repair without adoption.

In this case it was held, that even the performance of statute duty on a road, made under a temporary Act of Parliament, was not an adoption of the road by the parishioners, and that at the expiration of the Act they were not bound by common law to repair such road. At the expiration of the Act, the parish could only be liable to repair by reason of the common law obligation, which does not attach without an adoption by the public. And the case of *Rex v. Winter* was quoted as an authority. [But see *Rex v. Leake* and *Reg. v. Lordsmere*, post; and 5 & 6 W. 4, c. 50, regulating the dedication of new highways. That statute does not apply retrospectively to roads completely public by dedication before its passing, but only to roads then made, and in progress of dedication. See *Reg. v. Westmark*, 2 M. & Rob. 305.]

Rex v. Edmonton, 1 M. & Rob. 24.

Where the commissioners under an inclosure Act set out a private road, and directed it to be repaired by the parish (which they had no power to do), and it was so repaired for twenty-three years, it was held (there being no person who could be presumed to have dedicated the way to the public) to be a question for the jury, whether the parish repaired under a mistaken notion of liability, or from a voluntary disposition to repair a road useful and convenient to the public.

What is an adoption.

Rex v. Leake, 5 B. & Ad. 469; 2 Nev. & M. 583.—1833.

In this case the Court distinctly held, that no adoption by a parish is necessary to make the parish liable to the repair of a road which has been used by the public. The road in question had been set out by commissioners under a drainage Act, and it was questioned whether under the terms of that Act they were authorised to set it out; but the Court held that they were. In support of the necessity of adoption, the cases of *Rex v. St. Benedict* and *Rex v. Cumberworth* were cited, and the Judges delivered their opinions seriatim.

But in this case adoption was held not necessary.

Parke, J.—The questions raised on the argument of this case were three: 1st, Whether it was competent for the person in whom the soil was vested, to dedicate the use of part of it to the public, as a highway, it not being disputed but that if they had the power such dedication had taken place. 2ndly, Whether it was necessary, in order to charge the parish, that it should have adopted the highway; and if it was, 3rdly, Whether the parish had in fact adopted it. I have never entertained the least doubt upon any of these questions except the first; upon that I have felt some difficulty: but after much consideration, my opinion is, upon the statement in this case, that the commissioners in whom the property was vested might dedicate part of it to this special use. As to the second, I have always considered it as clear, that the parish is at common law bound to repair all *public* highways; this being, by the common law, the mode by which each parish contributes its share towards the public burthen of repairing all highways, instead of all the public roads being repaired by one general tax. Hence, if a road *be dedicated* to the public, no parish can refuse to repair it. It must bear in that shape its share of the general burthen, and its inhabitants receive an equivalent, not in the use of that road in particular, but in the use of all the public roads in the realm. The absence of repair by the parish is indeed a strong circumstance, in point of evidence, to prove that the road is not a public one. The fact of repair has a contrary effect; but the conduct of the parish in acquiescing or refusing its acquiescence is, in my opinion, immaterial in every other point of view. The judgment of Mr. Baron *Bayley*, in the case of *Rex v. St.*

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Benedict, 4 B. & Ald. 450, was cited on the argument as an authority to the contrary; but with every respect for that very learned Judge, I must say I cannot accede to the doctrine there laid down, and I am not aware that there is any authority in support of it. Upon the third question also, I feel no doubt. The repair by the parish of the part in question is undoubtedly a sufficient adoption, if adoption be necessary, which I am clearly of opinion it is not. Upon the whole, therefore, I am of opinion that the Crown is entitled to our judgment.

Littledale, J., dissented from this judgment, considering that the commissioners had no power to dedicate to the public, as a highway, land which they were entrusted with the ownership of for a special purpose; and that the only way to have it made a legal road, was by an application to Parliament. If a road has been used by people in the parish, it furnishes evidence pro tanto of its being a way for the rest of the public; and if the parish have repaired it, it furnishes a strong inference that it is a public highway, or else they would not have been at the expense; but it only raises a strong presumption, and there is no estoppel against a parish in such a case. The adoption by the parish does not necessarily, as a matter of law, make a road public; nor does their refusal to adopt it prevent its being so. And if it was a general rule to do so, still it would not be the case here, as Parliament has already directed it to be under the control of commissioners for Parliamentary purposes.

Denman, C. J., as to the first question, was of opinion, that all the terms in the definition of a public road were found in the statement submitted to the Court. With regard to the second question, he observed a second point was, that the parish was not stated to have adopted the road, but only to have repaired it on one occasion. If the fact of adoption were necessary, this statement of evidence from which it might be inferred would be insufficient. "But I by no means think any distinct act of adoption necessary in order to make a parish liable to repair a public road: I am of opinion, that, if it is public, the parish is of common right bound to repair it." (And see *Rea v. Lyon*, 5 D. & R. 497).

Reg. v. Lordsmere, 15 Q. B. 689.—1850.

User by the public makes a highway.

On an indictment against the inhabitants of the parish of L. for non-repair of a highway, it appeared that the road was originally made under a local turnpike Act passed in 1823, which was to be in force for twenty-one years, the preamble whereof stated that the making and maintaining of a certain turnpike road would be of advantage to the public at large; and by that Act trustees were appointed, who were enabled to make the turnpike road, and were required to erect sufficient fences where it passed through private lands. The Act did not expressly declare that the road should be a highway, but it enabled all persons to

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use it on payment of toll. Part of the turnpike road was formed upon an existing road, which had been made under a local inclosure Act, but which had never been declared to be completed, as required by the General Inclosure Act, 41 Geo. 3, c. 149, s. 9. The turnpike road was completed and opened to the public in 1833, and had for about fifteen years after that time been used by the public, and a coach had travelled over it; but no repairs had ever been done on it by the parish. At the time of the finding of the indictment the Turnpike Act was unexpired. This was held to be a Queen's common highway, repairable by the parish; and evidence to shew, that, although it had been opened to and used by the public, it had never been fully completed according to the requirements of the Turnpike Act, was rejected as being irrelevant. Lord Campbell, C.J., said, "It became a highway by statute, which provides, that for twenty-one years at least all the Queen's subjects shall have the right of passing along it. The payment of toll does not alter its character, and the incident of the parish being liable to repair it necessarily follows." The doctrine of *adoption* by the parish was treated as being "now quite abandoned."

Reg. v. Eastmark, 11 Q. B. 877;
Poole v. Huskisson, 11 M. & W. 827.

These cases establish, that, where a road has been used by the public for a great number of years, (even less than twenty years may be sufficient, where the user has clearly been acquiesced in by the owner of the soil: *Reg v. Chorley*, 12 Q. B. 515) a dedication of it by the owner of the soil may be presumed, whoever it may be, whether the Crown, the lord of the manor, or any other person; and that it is not material, under such circumstances, to inquire who the precise owner was, or whether he *intended* to dedicate the road to the public.

Rex v. Netherthong, 2 B. & Ald. 179.—1818.

A local turnpike Act for diverting, altering, widening, *repairing and amending* the road in question, enacted, that the lands, &c. purchased by the trustees should be made use of and converted into and be made part of the said road, in such manner as the trustees, or any seven or more of them, should think convenient and proper. And that the lands so to be converted into and made part of the said road should be sufficiently ditched and fenced out for that purpose, *and from time to time repaired out of the money arising by virtue of that Act, by such person or persons as such trustees, or any seven or more of them, should order, direct, or appoint*: and that the new road should to all intents and purposes from thenceforth become and be deemed and taken to be a public highway. The Act contained a proviso that nothing therein should be construed

The parish is the only party liable to be indicted for the non-repair of a turnpike road.

REPAIRS
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to be a discharge of any county, parish, township, &c. from the performance of statute work upon or otherwise repairing any road, bridge, &c. which they or any of them respectively had been accustomed or of right ought to repair, by reason of the tenure of any lands, or by ancient usage or otherwise, but that all and every such road, bridge, &c. should thereafter be kept in repair by such county, parish, township, &c. as theretofore the same respectively had been kept in repair. The township were bound by prescription to the repair of their highways. But it was contended, that the trustees were liable under the provisions of this Act in exemption of the township; or at any rate that the parish, and not the township, ought to have been indicted. Sed per *Abbott, C. J.*, "By the general rule of law, the inhabitants of any district who were liable to the repair of all the roads there, previously to the introduction of a new highway, are also liable to the repair of that highway. And the same rule extends to county bridges; for the statute which passed to limit the liability of the county to those cases only where the new bridge is substantially built, shews sufficiently, that, by the common law, they would otherwise be liable to the repair of all new bridges which might be erected within their district. Then, in this case, there is a new highway brought into the township of Netherthong. And it follows that the inhabitants, who, by the prescription stated in the case, are in effect placed in the same situation as that of the inhabitants of a parish, are liable to the repairs of this new highway. And the proviso in the local turnpike Act expressly says, that nothing therein contained shall exempt them from the liability which belongs to them. Then, can the clause which binds the trustees to repair make any difference? It is strange, if the trustees are liable, that in the multitude of turnpike Acts, almost all of which must contain similar provisions to the present, no case has yet occurred of any indictment being preferred against persons in that situation. I think, therefore, that the trustees are not liable by way of indictment; and that the only persons who are so liable are the present defendants." And *Bayley, J.*, observed, "I think that the tolls in this case are only an auxiliary and subordinate fund; and that the persons whom the public have a right to hold liable are the inhabitants of the township, who may afterwards apply to this Court for relief, under the 32nd clause of the General Turnpike Act."

Rex v. Flecknow, 1 Burr. 461; 2 Lord Ken. 261.

Repairs by
inclosure.

Where commissioners directed a public road across open common fields, inclosed and divided by a private Act of Parliament, to be made, and then allotted the land, it was held, that one whose lot adjoined to this open road, and who had inclosed it, was not bound to repair it.

REPAIRS.

Rex v. Yorkshire W. R. Justices, 2 East, 342.—1802.

The defendants were indicted for non-repair of a public bridge; and the indictment stated the bridge to be situate upon a rivulet, in a public highway. The defendants pleaded, that, after the making of a certain turnpike Act, the said bridge was first made by order of certain trustees in that Act named, in pursuance of the directions and for the purposes in the same Act contained, upon the said road in the said Act mentioned; and that no bridge had ever been there before that time erected. To this plea the plaintiffs demurred. After a long and able argument, the Court of King's Bench gave judgment in favour of the Crown, Lord *Ellenborough*, C. J., laying down with great clearness the principles that govern cases of this nature. "By the common law," he observes, "counties are chargeable with the repair of public bridges; unless it be shewn, as the stat. 22 Hen. 8, c. 5, says, what persons, lands, tenements, and bodies politic ought to make and repair such bridges. In the absence of such proof, that burthen is, by the operation of the common law, thrown on the inhabitants of the county in which the bridge lies. But in order to effect this, it is not enough that a new bridge shall be built in a highway used by the public; it must also be useful to the public; but enough is stated to shew that, the bridge being alleged to be in a public highway and used for all the king's subjects: it is at least sufficient to throw the *onus* upon the inhabitants of the county of shewing who else is bound to the repair, if they be not. I do not lay stress on the idea of the public having adopted the bridge by passengers going over it; because, if it occupy the highway they cannot help using it. I only rely on the using of it so far as to shew, that it does not appear to have been treated as a nuisance, but to have been acquiesced in by the public. If, however, it be built in a slight or incommodious manner, no person can, at his choice, impose such a burthen on the county; and it may be treated altogether as a nuisance and indicted as such. But if the public lie by without objection, and make use of it for some time, it is evidence that they adopt the Act; and the bridge becoming of public benefit, the burthen of repair ought properly to fall upon the public. The rule laid down by Mr. Justice *Aston*, in the *Glasburne Bridge Case*, seems to be the true one, 'that if a man build a bridge, and it become *useful* to the county in general, the county shall repair it.'"

And *Lawrence*, J., remarked, "Where we observe that the bridge was erected by trustees of a turnpike road appointed by an Act of Parliament, we cannot suppose that it was erected for other purposes than for the public utility."

Liability of
counties to
repair
bridges built
by turnpike
trustees.

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As to a foot
bridge.

Rex v. Middlesex, 3 B. & Ad. 201.—1832.

To an indictment against the inhabitants of a county for the non-repair of a foot bridge, they pleaded that it was parcel of a carriage bridge which A. B. was bound to repair *ratione tenuræ*. Replication admitted the liability of A. B. to repair the carriage bridge, but denied that the foot bridge was parcel of the same; whereupon issue was joined. The evidence was, that the carriage bridge mentioned in the pleadings had been built before 1119, and that certain abbey lands had been ordained for the repairs of the same, and the proprietors of those lands (of which those mentioned to be held by A. B. were part) had always repaired the bridge so built. In 1736 the trustees of a turnpike road, with the consent of a certain number of the proprietors of the abbey lands, constructed a wooden foot bridge along the outside of the parapet of the carriage bridge, partly connected with it by brick work and iron pins, and partly resting on the stone work of the bridge. Held, that this (being the foot bridge mentioned in the indictment) was not parcel of the carriage bridge which A. B. was bound by tenure to repair; and, consequently, that the county was liable to repair the foot bridge.

Reg. v. County of Southampton, 21 L. J., M. C., 201.—1852.

A foot bridge formed by three planks nine or ten feet long and a hand rail, which carried the public over a small stream, was held not to be such a bridge as the county was bound to repair.

Rex v. Somerset, 16 East, 305.—1812.

When the
county li-
ability is sus-
pended.

The 49 G. 3, c. 84, appointed trustees for taking down the old and building a new bridge over the river Tone, and empowered them to take tolls; and that it should be lawful for them, out of the monies received, to build a new bridge, &c., and vested the property in the old and new bridge during the continuance of the Act in the trustees; and as soon as the purposes of the Act should be executed, then and from thenceforth the tolls should cease, and the bridge, &c., should be repaired by such persons as were by law liable to repair the old bridge. It was held, that, during the time the trustees were engaged in executing the powers of the Act, and before they had completed them, the county was not liable to repair the bridge.

Rex v. St. Benedict, 4 B. & Ald. 447.—1821.

In a question respecting the dedication of a road, which was decided in favour of the parish in the absence of an acquiescence, the Court said,—In the case of bridges, there always is what is to be considered an acquiescence by the county. The county is not liable except for bridges made in highways; the making of the bridge, and thereby obstructing the road while the bridge is making, may be treated as a nuisance, and the county may, if it think fit, stop its progress by indictment, and the forbearing to prosecute in that way is an acquiescence by the county in the building of the bridge. The parish have no power to prevent the opening of a road.

Adoption not necessary to render the county liable.

Rex v. Oxfordshire, 6 D. & R. 231; 4 B. & C. 194.—1825.

Where turnpike trustees erected a bridge in pursuance of the powers given them by the Act, upon a road where there had been no bridge before; it was held, that the county was primarily liable to keep it in repair, even assuming that the trustees had funds in hand applicable to that purpose.

Trustees' funds no excuse to the county for non-repair.

Rex v. Oxfordshire, 1 B. & Ad. 289.—1830.

A road, by which a bridge was approached, passed between meadows which were occasionally flooded by a river, and, for the convenient access to the bridge, a raised causeway had been made, having arches or culverts at intervals for the passage of the flood water, which were necessary to the safety of the main bridge and the causeway. It was held, on a motion for a new trial of an indictment, that the inhabitants of the county were not bound to repair such arches, being at the distance of more than three hundred feet from the end of the main bridge. And in this case, the Court laid down a general rule as to what description of bridges the county were liable to repair, viz.—Such as are built across *water flowing in a channel between banks more or less defined*, although such channel may be occasionally dry.—[But see *Reg. v. Derbyshire*, *infra*.]

What is a county bridge.

Rex v. Whitney, 3 A. & E. 69; 4 Nev. & M. 594.—1835.

Though there cannot be a bridge which the county is bound to repair where there is no *cursus aquæ*, yet it is a question of fact in each case, whether an arch thrown over a *cursus aquæ* is such a bridge or not. The fact of the arch or bridge having no *parapets* does not of itself prevent its being a county bridge.

REPAIRS.

Reg. v. Derbyshire, 2 Q. B. 745; 2 G. & D. 97.—1842.

But it is not essential to a “bridge,” in the legal sense of the word, that it should be a structure over water which flows at all times. A structure, called S. Bridge, was 1275 yards long: at the eastern end were five arches, under which the river Trent flowed; at the western end eight arches, under one of which a stream constantly flowed; the rest of the space consisted of a raised causeway, at different intervals in which there were twenty-nine arches, under most of which there were pools of water at all times, and under all of which the water of the Trent flowed in time of flood. There was no interval of causeway between the arches of the length of 300 feet. The county of Derby had immemorially repaired the whole structure. On an indictment against the inhabitants of the county for the non-repair of the structure, describing the whole as a bridge: it was held, that it was properly so described, and that the verdict was properly entered for the Crown.

Rex v. Derbyshire, 3 B. & Ad. 147.—1832.

Bridges built
by turnpike
trustees are
within the
43 G. 3.

In this case, it was decided that the trustees of a local turnpike Act are individuals or private persons, within the meaning of the County Bridge Act, 43 G. 3, c. 59, s. 5, and therefore cannot erect a bridge which the inhabitants of a county are liable to repair, unless it be under the direction or to the satisfaction of the county surveyor, &c. The case of *Rex v. Yorkshire, W. R.*, 2 East, 342, was referred to, in which Lord *Ellenborough* said, that the effect of the decision in that case might be, that the trustees under similar Acts would throw this burthen generally on the counties, and that it might therefore be necessary to make special legislative provision in future; and the Court said, that the 43 G. 3, which was passed in the session of Parliament next ensuing that decision, was no doubt intended to remedy the inconvenience pointed out by Lord *Ellenborough*.—[See also *Reg v. Gloucestershire*, C. & Mar. 506].

Rex v. Lancashire, 2 B. & Ad. 813.—1831.

But widening
a bridge
is not building
it under
43 G. 3.

A carriage bridge had been widened subsequently to the passing of the statute 43 G. 3, c. 59, by the trustees of the turnpike road between Manchester and Wilmslow, and the question was, whether the county was exempt from its repairs in consequence of its not having been built under the direction of the county surveyor. *Per Cur.*—A bridge widened, as in the present instance, appears not to have occurred to the legislature; at all events, it is not within the words of the section. The statute only applies

to bridges newly erected after its passing. In this case the trustees had built a bridge across a stream where a culvert would have been sufficient, but a bridge was better for the public; and it was held that the county could not refuse to repair such bridge, on the ground that it was not absolutely necessary. [See also *Reg. v. Adderley*, 5 Q. B. 187; D. & M. 324.]

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Rex v. Devonshire, 5 B. & Ad. 383; 2 Nev. & M. 212.—1833.

Before the statute 43 G. 3, c. 59, there had been a public county bridge, which was of wood, resting on stone abutments. After that statute passed, the wooden part of the bridge was, during a flood, carried some distance down the river, but the stone abutments remained. Part of the wooden materials, being afterwards collected together, were, with new materials, formed into the upper part of a bridge, which was wider than it had been before the flood, and placed upon the old abutments. This was done at the expense of the parish, and not under the direction of the county surveyor.—Held, that this was not a bridge erected or built after the passing of 43 Geo. 3, c. 59, s. 5, and that the inhabitants of the county were bound to repair it.

Similar case.

Rex v. Llandilo Roads Commissioners, 2 T. R. 232.—1788.

In the year 1765, an ancient road, leading through the town of Llandilofour, which went along the outside of the churchyard, was by an order of the trustees carried through the middle of the churchyard, at which time the trustees caused a wall to be built at their sole expense on each side of the road so diverted, which they had ever since repaired till within the last three years. By a clause in the Act it is enacted, "That the trustees shall apply the money raised by the tolls, &c. in erecting gates and toll-houses, and repairing and widening the said roads within their respective districts, and defraying the necessary costs, charges, and expenses attending the same and the execution of the said Act." It was contended, that under this clause the trustees were liable to the repair of the wall which they had built, upon the plea that these walls should be considered as part of the road for this purpose, because the road could not have been turned through the churchyard without erecting them. Sed per *Ashhurst, J.*—"As no clause is inserted in the Act which throws the onus of repairs on the trustees, we cannot make them liable." And per *Buller, J.*—"What is meant by the road in the Act is the surface over which the subjects have a right to pass."

Trustees not
liable to re-
pair fences.

TOLLS.

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Stourbridge Canal v. Wheeley, 2 B. & Ad. 792.—1831.

The words imposing toll must be clear and unambiguous.

This was an action of assumpsit, brought by the plaintiffs to recover compensation for the use of the canal, which was formed upon two levels, connected by a chain of locks. The question turned upon the construction of certain words in the local Act, and was decided in favour of the defendant. *Per Cur.*—The canal having been made under the provisions of an Act of Parliament, the rights of the plaintiffs are derived entirely from that Act. This, like any other case, is a bargain between a company of adventurers and the public, the terms of which are expressed in the statute; and the rule of construction in all such cases is now fully established to be this, that any ambiguity in the terms of the contract must operate against the adventurers, and in favour of the public; and the plaintiffs can claim nothing which is not *clearly* given to them by the Act. This rule is laid down in distinct terms by the Court in the case of *The Hull Dock Company v. La Marche*, 8 B. & C. 51, where some previous authorities are cited; and it was also acted upon in the case of *The Leeds and Liverpool Canal Company v. Hustler*, 1 B. & C. 424. Adopting this rule, we are to decide, whether a right to demand some compensation for the use of this part of the canal is *clearly and unambiguously* given to the plaintiffs by this Act of Parliament, and we think it is not.

Rowe v. Shilson, 4 B. & Ad. 726; 1 N. & M. 734.—1833.

Questions as to tolls between railway and turnpike road.

An embankment company was, by an Act of Parliament (not limited in duration), empowered to make a road and to erect turnpikes upon or across *any lanes or ways leading or that might thereafter lead out of the same*, and to take tolls at such turnpikes. By subsequent Acts, another company was empowered to make a railway; and it was enacted, that all persons should have free liberty to use the same, with carriages properly constructed, *upon payment only of such rates and tolls as should be demanded by the railway company*, not exceeding the sums mentioned in that Act. The railway was afterwards made, and it crossed the embankment company's road.

Held, first, that the railway, though made and opened to the public by Act of Parliament, was a "way" within the meaning of the first-mentioned Act. Secondly, that the clause in favour of the public in the Railway Act did not take away the vested right of the embankment company to their tolls; and, consequently, that they might take toll of persons crossing their road upon the railway.

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Pickford v. Davis, 1 Bing. N. C. 141.—1834.

By the old General Turnpike Act, 13 G. 3, c. 84, s. 23 (1773), the trustees of turnpike roads are required "to demand and take for every waggon, wain, cart, or carriage, having the fellies of the wheels thereof of less breadth or gauge than six inches from side to side at the least at the bottom or sole thereof, and for the horses or beasts of draught drawing the same, one half more than the tolls or duties which are or shall be payable for the same respectively. Under a local turnpike Act, 1 & 2 G. 4, c. lxxxv., the following tolls were granted: "for every horse or other beast drawing any waggon, wain, or such like carriage, having the fellies of the wheels of the breadth of six inches and upwards, and drawn by five or more horses or other beasts, the sum of 4*d.*, and drawn by four or any less number of horses or other beasts, the sum of 4½*d.*; for every horse or other beast drawing any waggon, wain or such like carriage, having the fellies of the wheels of less breadth than six inches, and drawn by four horses or other beasts, the sum of 4½*d.*; and drawn by three or any less number of horses or other beasts, the sum of 3*d.*

As to additional tolls for narrow wheels, and construction of the general turnpike laws.

By the New General Turnpike Act, 3 G. 4, c. 126 (6th August, 1822), all the existing general laws were repealed, and additional tolls were imposed upon narrow wheeled waggons; and that Act was extended to all local Acts by sects. 1, 4, 7. By 4 G. 4, c. 95, ss. 5 and 6, the additional tolls imposed by the 3 G. 4, were not to be taken where the additional tolls imposed by 13 G. 3, had not been collected. On the road in question, the larger toll, 6¾*d.* per horse had been collected in respect of each horse drawing a narrow-wheeled waggon, upon the alleged application of the 13 G. 3, from May, 1821, until April, 1832. The question was whether the larger toll of 6¾*d.* or the smaller toll of 4½*d.* was payable. The Court were of opinion that the increased toll, so long as it depended on the authority of the 13 G. 3, was an illegal toll, being grounded on a misapplication of the provisions of that Act, which had been decided, in the case of *Ridge v. Garlick*, 2 Moore, 481, not to apply to tolls imposed by local Acts, containing a specific enactment of toll in respect of a particular description of wheel; but that this toll became legal under the 3 G. 4, c. 126.

Tindal, C. J.—The 3 G. 4, c. 126, s. 7, differs from the provision contained in the 13 G. 3, in this important respect; that whereas the old Act contained no reference whatever to tolls payable under local Acts, proportioned to the width of the wheels, but proposed to legislate only for the case where a toll was imposed generally on the horse or the carriage; the new Act, on the contrary, applies itself distinctly and in terms to the case of local Acts containing a scale of tolls proportioned to the width of the wheels being above or below six inches. To such cases it creates and applies a new scale of increase, namely, a scale where the wheels are less than four inches and a half, or more

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than four inches and a half and less than six. Now the precise provision contained in the local Act under which this road is governed, is a scale where the wheels are of a width above or below six inches. And we can see no principle of construction upon which it can be held, that the scale of increased tolls enacted by the new General Turnpike Act should not be held to apply to the scale given by this local Act.

We therefore think the increased toll of $6\frac{3}{4}d.$ became the legal toll upon each of the horses in question, from the 1st of January, 1823; and that at all events it continued to be the legal toll until the passing of the subsequent general Act of 4 G. 4, c. 95; and the only remaining question appears to be, whether such subsequent Act has made any alteration in this respect. The only sections in that Act which appear to have any bearing on the question, are the 5th and 6th.

The 5th section relates to one class of cases only, viz. where the commissioners shall not, previous to the passing of the former Act, that is, previously to the 6th of August, 1822, have taken the additional tolls on waggons having the wheels of less breadth than six inches from side to side, directed to be taken by 13 G. 3, c. 84, and the particular or local Act *shall not* have provided a scale of tolls applicable to the road. In that case, the commissioners are directed, after the 1st of January, 1824, to continue to take for every waggon having the fellyes of the wheels of less breadth than four inches and a half, the same tolls as are by the local Act payable in respect of such waggon. This section, however cannot apply to the present case, as neither of the conditions specified therein exists here; for the special case finds that the commissioners *did take* previously to the 6th of August, 1822, the additional tolls directed to be taken by the 13 G. 3, c. 84; and again, the local Act *has* provided a scale of tolls applicable to the particular road.

The 6th section directs, that where any particular Act of Parliament then in force shall direct a higher or lower rate of toll to be collected, regulated in respect of the greater or lesser breadth of the wheels, and where, in addition to the tolls received under the particular Act, the additional tolls in respect of the breadth of wheels authorised to be taken by the Act of 13 G. 3, shall *not* have been collected and imposed, the commissioners shall, after the 1st of January, 1824, continue to take the tolls under the powers of the local Act, and shall not impose the additional tolls imposed by the Act therein recited, that is, the 3 G. 4, c. 126. And we think the present case does not fall within this section; because, although one of the conditions mentioned therein, namely, that the particular Act directs a higher or lower rate of toll to be taken, is found to exist: yet, the second condition, that the additional toll authorised by 13 G. 3, had not been collected and imposed, is denied by the special case. For we cannot give any other sense to the words "collected and imposed" than their ordinary and natural meaning, that is, taken under the real or supposed authority of that statute.

The present case, therefore, appearing to us to be a *third case*, differing from both those intended to be remedied by the 5th and 6th sections, namely, a case in which the local Act *does* direct a higher or lower rate of tolls to be taken in respect of the greater or lesser breadth of the wheels, and in which the additional toll authorised by 13 G. 3, has been collected and imposed, we think it is left untouched by the last General Turnpike Act; and consequently that the increased toll of 6 $\frac{3}{4}$ d. is the legal toll.

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Rex v. Gough, 2 Chit. 655.

Under an exemption from toll, in an Act of Parliament, for carts carrying compost, &c., or anything whatever used in the manuring of land, the carriage of lime is not exempt; the words "or any thing whatsoever used in the manuring of land," being considered as only applying to the carriage of ploughs, harrows, and such like instruments.

As to the exemption of lime as manure.

Chambers v. Eveas, 2 Camp. 393.

The plaintiff sent his waggon to London with a load of vegetables and two bottles of cream; and the goods having been delivered, the waggon took in a load of manure, and the two empty bottles were tied to the waggon. When the waggon arrived at the turnpike on its way home, the defendant (who collected the tolls there) insisted that these bottles being in the waggon rendered it liable to be weighed and to pay for overweight, inasmuch as the statute (14 G. 3, c. 82, s. 3) exempting waggons carrying manure from the penalties for overweight, required that they should be employed in carrying "only" manure. Lord *Ellenborough*, C. J., was clearly of opinion that the plaintiff was not liable to the penalty for overweight. His lordship observed, that if the load consists *substantially* of manure, and manure only, the exemption will not be defeated by an article being tied to the waggon which could not be considered as goods and merchandise, and which could not produce the mischief against which the legislature meant to provide.

As to manure exemption.

Harrison v. Brough, 6 T. R. 706.—1796.

A local statute exempted from toll "horses going to or returning from pasture," and "horses attending cattle returning from pasture." A lad was riding a horse, belonging to his master, to pasture, in order to fetch up to the farm two of his master's cows, which were feeding there. On going through the toll-gate for this purpose, toll was demanded for the horse, and on the lad refusing to pay it the horse was distrained for it. On an action brought

As to exemption of horses going to fetch others from pasture.

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against the collector, it was contended by the plaintiff that it would be absurd to exempt a horse when returning with the cattle from pasture, and yet to hold that the owner was liable to toll when going on the horse to fetch them; but the Court held that the plaintiff was liable to the toll. Lord *Kenyon*, C. J., said, that to allow of the exemption in such a case, would be to open a great door to fraud; for the collector has no means of knowing whether the horse be really going to fetch the cattle or not: and he thought that the plaintiff was neither within the words nor the spirit of the exemption.

Hickinbotham v. Perkins, 3 Moore, 185; 8 Taunt. 795.—1819.

Exemptions
in favour of
agriculture
to be bene-
ficially con-
strued.

A clause of a turnpike Act exempted from toll all carriages employed in the conveyance of materials for repairing the roads, or any of the highways, in the parishes in which any part of the road lay; and, in a subsequent part, exempted generally carriages employed in conveying implements of husbandry or manure. In the following clause, the trustees were empowered to compound with persons who resided in one parish, and occupied lands in an adjoining parish. The plaintiff's waggon was passing on the road, laden with lime, from one parish to another, for the purpose of the cultivation of his farm, situate in the latter, neither of which were situate in any of those parishes through which the road passed: Held, that this being an exemption in the former clause in favour of husbandry, was to be beneficially construed, and that it was not restrained by the subsequent one; and that, consequently, the plaintiff was not liable to the payment of toll. The Court said, these Acts are often inaccurately drawn, and even, taking the construction of the clause to be doubtful, a doubtful meaning is not a sufficient ground to restrain the operation of a general clause, which, in its own terms, is clear and precise; and least of all should such restraint prevail, when it is to narrow and repeal a provision, which, for the public benefit, ought to be largely and beneficially construed.

Lewis v. Hammond, 2 B. & Ald. 206.—1818.

As to exemp-
tions when
going to
church, &c.

A local Act of 37 G. 3, contained a proviso "that no toll should be demanded or taken for the passage of any person residing in any township or parish in which the road lay, going to and returning from his *proper parochial church, chapel, or other place* of religious worship on Sundays." The Court decided that the word "parochial" extended over the whole clause; and therefore, that a dissenter was not entitled to the exemption, in going to his proper place of religious worship *which lay out of the parish*. It appeared that the plaintiff was an inhabitant of one of the parishes in which the turnpike road lay, where there was a parish church: he was a

member of, and a regular attendant at, and contributor to, a congregation of Protestant dissenters, whose place of religious worship was situate out of the parish where he resided. In going to such place on Sunday, in order to attend the service there, his chaise passed along the turnpike road, and through one of the toll-gates, at which he claimed to be exempt from the toll, under the above statute. The jury found that the place to which he was going was his "proper place of religious worship." The Court, however, said that the word "parochial" was to be applied, in construction, not to the word "church" only, but also to the following words "chapel or other place," &c. as denoting the situation of such chapel or place with reference to the residence of the persons frequenting it; and they held that the plaintiff was therefore liable to pay the toll. [But see ante, p. 27.]

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Major v. Oxenham, 5 Taunt. 340.—1814.

The 34th section of the 13 G. 3, c. 84, exempted persons from toll who "only crossed the road *and* should not pass above a 100 yards thereon." In an action for tolls, it appeared that the cart of the defendant entered the road, and after proceeding not quite 100 yards along it, turned off again *on the same side at which it entered*, and consequently did not "cross" the road. It was contended for the plaintiff that the defendant was liable to the toll because his cart did not cross the road, in consequence of the Act having made use of the word "and," which could not be read disjunctively. But the Court said, that a carriage could not go 100 yards along a road merely in crossing it, and held that the defendant was exempt from toll though he did not cross the road,—not having passed on it for 100 yards.

Question as to exemption for not passing 100 yards on the road.

Phillips v. Harper, 2 Chit. Rep. 412.—1814.

The plaintiff had passed only nine or ten yards along a turnpike road (when he entered into a road under the care of different trustees), but did not cross the road. The Court held that he was liable to pay the toll, notwithstanding the exemption in the 13 G. 3. They thought it essential, in order to entitle him to the benefit of the exemption, that the party claiming it should cross the road. *Dampier*, J., said, he must cross the road; and Lord *Ellenborough*, C. J., said, that crossing was the principal part which the legislature meant to privilege; and *Le Blanc*, J., said, the argument in favour of the plaintiff would go to the extent of shewing that if a man had a house within 100 yards of a toll-gate he would never pay the toll. The plaintiff had used the road; that rendered him liable to toll: he had not crossed it; and therefore he was not exempt.

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See the observations in the Work above cited, attempting to reconcile this decision with that in *Major v. Ozenham*, ante, p. 409.

Bussey v. Storey, 4 B. & Ad. 98.—1832.

Similar question where the road was not all repaired by the turnpike trusts.

This question arose on a writ of error from the judgment of Lord Chief Justice *Tindal* and Mr. Baron *Bayley*, constituting the Court of Pleas at Durham, upon a special verdict. The question was, whether the plaintiff's carts, which passed through the turnpike at Croft Bridge in that county, but did not pass more than 100 yards on the road, exclusive of the part at the end of the bridge which the county are bound to repair, were exempt from toll under the 52 G. 3, c. 38, s. 37, a local turnpike Act. The Court decided that they were not, and that the judgment of the Court below ought to be affirmed.

The Court said, it is a mistake to suppose that the object of this and other turnpike Acts is to relieve parishes and townships from the burthen of repairing the highways. Their object is to improve the roads for the general benefit of the public, by imposing a pecuniary tax in addition to the means already provided by law for that purpose. The obligation to maintain all public roads (with the exception of those which are to be repaired *ratione tenuræ* or *clausuræ*) is a public obligation, and in the nature of a public tax. The repairing by parishes or townships of some part, and by counties of other parts, are merely modes which the law has provided for discharging that obligation. It is their share of the public burthen which those districts have to pay, and which is imposed for the general benefit of the community, and tolls are an additional tax for the same purpose. But as this statute does impose a tax, the usual rule of construction must be applied to it which is adopted in similar cases, and the subject must not be charged unless the intention to charge clearly and distinctly appear.

Are, then, the words of this statute clear and distinct? It is intitled "An Act for more effectually repairing *the Road from Boroughbridge, in the county of York, to the city of Durham*;" and it enacts (section 25), that certain tolls shall be demanded and taken *at each and every toll gate* and turnpike, which shall be *continued* or erected by virtue of the Act, from any person attending a carriage, before such carriage shall be permitted to pass; but it provides (section 37), that no toll shall be taken for any carriage which only crosses *the said road*, and shall not pass more *than 100 yards thereon*.

The statute, therefore, in clear words, imposes the tax on carriages which go through a turnpike gate, and pass more than 100 yards on the said road; and the term "the said road," in grammatical construction, refers either to the title of the Act or to the nearest preceding description of the road (which is in section 28); and on either supposition, the road is the *whole* space between

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Boroughbridge and the city of Durham. And besides, the Act (section 68) contemplates that *counties* will have to repair some parts of the road; and what other parts can those be, than the space of 300 feet at the ends of the bridges?

Add to this, that the toll gate in question, which is erected within that distance, is recognised as being *on the road* by 22 G. 2, c. 32, s. 6, and no doubt its continuance is authorised by the 21st section of the present Act, as a toll gate “across the road thereby intended to be repaired.”

The words, therefore, of the Act are clear, and the construction should be according to these words, unless it can be shewn that such construction would be unreasonable, or inconsistent with the apparent intention of the framers of the Act. It is said, that it would be unreasonable, because toll is given as a compensation for the use of the road; and that the plaintiff had a right to use this part of the road before without paying toll, and gains nothing by the payment of the toll, because that toll could not be laid out in its improvement. But it is obvious that the first part of this objection applies equally to the parts of the road repairable by parishes, townships, or individuals; and the latter proceeds on an assumption which, so far as we are aware, is not founded upon any express provision in the Act, that the trustees would violate their duty in laying out any portion of their funds upon this part of the road. It is true, that they are not likely to be called upon to do so, because the county, being in general provided with an ample fund, fulfils its obligation to repair completely and effectually; but if the reverse should happen to be the case, and the public exigency require it, we do not know that the trustees might not expend money in repairing this portion of the road.

And supposing it were otherwise, and that no part of their funds *could* be so laid out, it cannot be considered as *unreasonable* that a person who uses any part of a road, all of which is virtually repaired by the public, though in different modes, should pay something to the public in return.

It appears to us that there is nothing unreasonable in this construction; and there is certainly nothing inconsistent with the express or implied intention of the legislature to be collected from other parts of the Act. In our opinion no distinction can be made in respect of the obligation to pay toll between the parts of the road which are repaired by parishes, townships, or individuals, and those which are repaired by the county; whatever the liabilities to repair may be, all are alike *parts of the road*.

Pope v. Langworthy, 5 B. & Ad. 464.—1833.

Where certain roads were, by local Acts, placed under the direction of trustees for amending, improving, and repairing the same, and the trustees were empowered to erect turnpike gates on the said roads, and receive tolls there; but there was a certain

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portion of one of the said roads which they were prohibited from repairing or improving, and on which they were not to erect toll gates.—It was held, that a person travelling along the last-mentioned road for more than a hundred yards, including the excepted part, but less if that part were excluded, was not exempted from toll by 3 G. 4, c. 126, s. 32.

Phipson v. Harvett, 1 C. M. & R. 473.—1834.

Similar case, where part of the road had, as to repairs, &c. been taken out of the hands of the trustees.

By a local Act, 58 G. 3, tolls were authorised to be taken from persons passing along a turnpike road. An Improvement Act subsequently passed, exempting and prohibiting the trustees under the former Act from repairing a certain portion of such road, giving the management thereof to the Improvement Commissioners: but the Improvement Act was silent on the subject of tolls. Held, that this portion still continues, for the purposes of toll, to be a part of the turnpike road; and a person travelling 100 yards over the turnpike road, taking into consideration that part of it now repaired by the Improvement Commissioners, but less than 100 yards of that part which is now repaired out of the turnpike trust funds, is not exempt from toll; the case not being distinguishable from *Pope v. Langworthy*, and *Bussey v. Storey*.

Williams v. Sangar, 10 East, 66.—1808.

Question as to exemption on carriages passing more than once on the same day.

A local Act imposed a certain toll on *every carriage* drawn by so many horses, and another on horses not drawing; and it provided "that no person should be subject to the payment of toll more than once in any day for passing and repassing with the same horses or carriage through the same toll gate" on the several roads specified. The Act also contained a proviso, "that in all cases of carriages travelling for hire, the travellers or passengers conveyed therein should be considered as the persons paying the toll, and that such payment should not exempt such carriages repassing with different travellers, but that they should be liable to pay the toll as if the carriage had not before passed that day."

Two questions arose upon this statute: the one, whether the latter provision applied to *stage-coaches*,—the other, whether a stage-coach, having paid the toll, and returning in the course of the same day *with different passengers and horses* (being the same in number), was liable to a second payment of the toll? As to the latter point, the Court said the change of horses made no difference, inasmuch as the toll was laid (not on the horses drawing, but) *on the carriage drawn by so many horses*; and that the proprietor was not liable to pay a second toll on that account.

Upon the other point, it was contended by the defendant, that in the case of "carriages travelling for hire," the second toll was imposed on the travellers or passengers, and not on the carriage;

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and that, inasmuch as this “carriage travelling for hire” repassed “with different travellers,” it was by the express provision of the Act liable to a second toll. The Court, however, decided otherwise. Lord *Ellenborough*, C. J., observed that the question was, whether a stage coach was a carriage “travelling for hire,” within the meaning of the clause narrowing the exemption? Adverting to the usual mode of travelling, it appeared intended only to apply to post-chaises and other carriages, which were frequently hired to pass and repass on the same road with different travellers on the same day, where the respective travellers might be properly said to have hired the carriage, each in his turn. In those cases, the payment of the toll by one traveller hiring the carriage, was meant not to exempt any other traveller who happened to hire the same carriage on the same day. The Court must look to the difference between what, strictly speaking, was a traveller or passenger hiring *a carriage*, and one who only hires *a place* in a carriage, but cannot be said to hire the carriage itself. That was a distinction well understood; and where the travellers do not hire the carriage itself, but only their respective places, it appeared not to be within the meaning of the clause. They therefore held that the plaintiff was not liable to pay a second toll.

Gray v. Shilling, 4 Moore, 371; 2 Brod. & B. 30.—1820.

A local Act imposed a toll *on carriages and waggons*, (and not on the horses drawing them), and provided, that “no person having paid the toll directed by the Act should be liable to pay a second time on returning the same day.” A subsequent statute, applicable to the same road, repealed the tolls granted by the former Act, and imposed others *on the horses drawing*, and not on the carriages; and by the latter Act all the provisions of the former statute were continued in force, except where they were expressly repealed or altered. Subsequently to the passing of the new Act, the plaintiff passed with a stage-coach through a gate, and paid the toll for the horses by which it was drawn, and returned the same day with *a different coach* drawn by *the same horses*. It was contended by the defendant, that, as there was no clause in either Act exempting *horses* passing a second time through the same gate with a different carriage, such carriage was liable to pay a distinct toll, though it might be drawn by horses which had previously passed through and paid at the same gate with another carriage. But the Court decided, that all the exemptions mentioned in the former Act were adopted and re-enacted by the new Act; and that therefore the plaintiff was not liable to pay a second toll on his returning the same day with a different carriage drawn by the same horses.

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Waterhouse v. Keen, 4 B. & C. 200.—1825.

Similar question.

By a local Act a toll was imposed upon "*every coach, &c. drawn by horses, mares, mules, or geldings,*" varying in amount in proportion to the number of horses, &c. drawing: and it was provided "that no more than one toll should be demanded from any person for passing and re-passing the same day with the *same horses, cattle, beasts, and carriages*, through all the toll-gates in the whole length of road between D. and C.; but that every person, having paid the toll, should be permitted to pass and re-pass with the same horses, cattle, beasts, and carriages, toll free, during the same day, through all the toll-gates in that division." Other tolls were imposed by the Act—on horses, mares, mules, and geldings, laden or unladen, and not drawing, and on oxen, calves, hogs, &c. It appeared that a stage-coach belonging to the plaintiff passed through one of the toll-gates in this division in the morning and paid the toll imposed by the Act on a carriage drawn by four horses; in the evening of the same day, the *same coach* repassed through the same gate, driven by the *same coachman*, but having *different horses and passengers*. The Court were of opinion that the plaintiff was not liable to a second toll, which the defendant contended he was, by reason of his not having re-passed with the same horses as well as the same carriage. *Bayley, J.*, said, that as a distinct toll was previously imposed upon horses, upon cattle, calves, &c., which are properly denominated beasts, he thought that the exemption applied to every separate thing on which the toll was previously imposed. The fair construction of the clause was, that the word *and* was not to be taken conjunctively, but disjunctively or distributively; and then the consequence would be, that if you return with the same horses drawing the same carriage, you are to pay no toll; if you return with the same horses, mares, mules, &c., laden or unladen, you are to pay no toll; and if you return with the same carriage, you are to pay no toll. There was nothing in the Act which necessarily connected the word *carriage* with *beasts*.

The Court, however, gave judgment for the defendant, on the ground that he ought to have received notice of action, though they decided the question on the statute relating to the toll in favour of the plaintiff.

Loaring v. Stone, 2 B. & C. 515; 3 D. & R. 797.—1824.

Similar question.

The question as to the liability of the plaintiff to pay a second toll arose on a statute by which a toll was imposed upon *every horse, &c.*, drawing any coach, chaise, &c.; another, upon *every horse* drawing singly any carriage; another, upon *every horse* drawing any waggon, cart, or other such carriage; and another upon *every horse* not drawing. The clause limiting the payment of the toll to once in the same day provided, "that no person should be

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liable to pay toll more than once at any one toll-gate in any one day for passing and repassing through the same gate with the *same horse* or horses, cattle, beasts, and carriages; but that, having paid the toll once, he should pass toll-free with the *same horse* or horses, cattle, beasts, and carriages, during the same day."

A stage-coach belonging to the plaintiff, drawn by four horses, passed through one of the toll-gates, and paid the toll; and, in the evening of the same day a *different coach*, drawn by the *same horses*, driven by the *same coachman*, and belonging also to the plaintiff, but carrying *different passengers* and parcels, repassed through the same gate.

The Court held, that the plaintiff was liable to the payment of a second toll, in consequence of the coach being different—the exempting clause having introduced the word "carriages." *Bayley, J.*, said, that as no toll was imposed by the enacting clause upon *the carriage*, there could be no reason for introducing that word into the proviso, unless it were intended to confine the exemption in respect of horses drawing carriages to the same horses drawing the same carriage: and it might be very reasonable that the exemption should be limited to that case, for otherwise the same horses, with a different hired chaise and different travellers, would be exempt from the payment of toll.

Jackson v. Curwen, 5 B. & C. 31; 7 D. & R. 838.—1826.

A statute imposed a toll upon *every horse, &c.*, drawing any carriage, another upon every horse not drawing, and another upon oxen, with a proviso, "that no collector should take more than one toll from any person for the *same carriage, horses, beast, or other cattle*, passing once and repassing once in the same day, on such person producing a ticket denoting that such toll had been paid on that day for or in respect of such *horse, beast, or other cattle*." The plaintiff passed through a gate with a stage-coach drawn by four horses, and paid the toll; and in the course of the same day he returned through the same gate with a *different coach* drawn by *the same horses*. The Court held, that he was exempt from the payment of a second toll, notwithstanding the word "carriage" in the exempting clause. *Bayley, J.*, observed, that the word carriage was introduced as a subject of toll for the first time in the exempting clause. From that part of the clause taken by itself, it would appear to have been the intention of the legislature that it should apply to cases only where the same horses repassed, drawing the same carriage. The carriage, therefore was contemplated as a subject matter of toll. But then the clause went on to annex, as a condition precedent to any exemption, that the party claiming it should produce a ticket denoting that such toll had been paid on that day, for or in respect of such "horse, beast, or other cattle."—Considering, therefore, that the toll was originally imposed upon the horses drawing, and not

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upon the carriage, and that it did not appear *clearly* that the legislature meant to confine the operation of the exempting clause to cases only where the same horses returned with the same carriage, the general rule of construction ought to prevail; and consequently no second toll was payable for the same horses returning the same day with a different carriage, the property of the same person.

Chambers v. Williams, 7 D. & R. 842; 5 B. & C. 36.—1826.

Similar question.

A local Act imposed a toll on *every horse* drawing any coach, &c.; another on horses not drawing; another on four-wheeled, and another on two-wheeled carriages tied or affixed to any waggon. The exempting clause enacted, "that every person having paid the tolls, on producing a ticket denoting payment, might repass toll free once in the same day through the gate mentioned in the ticket, with the *same horses*, mules, or other beasts, *coach*, cart, waggon, or other *carriage*." The plaintiff's stage-coach and four horses passed through a toll-gate, and in the evening the *same coachman* drove the *same horses* with a *different coach* through the same gate. It was decided that he was not liable to a second toll, the Court observing, that, taking the two clauses together,—and advertng to the rule of construction which had been applied to similar statutes where the toll had been imposed *on the animal drawing* the carriage, and where there was a general clause of exemption applicable both to the horse and carriage,—they thought it very doubtful whether the legislature meant to impose a second toll, where the same horse returns with a different carriage on the same day; and that being so, they ought to incline to that construction which would have the effect of relieving the subject from a burthen.

Fearnley v. Morley, 5 B. & C. 25.—1826.

Similar question.

A local statute, 38 G. 3, imposed a toll on *every coach, berlin, &c.*; certain other tolls on horses not drawing; and others on cattle; and it was provided, "that every person having once paid the tolls so made payable for his carriage, horses, and cattle, and returning the same day with the *same carriage, horses, and cattle*, should pass toll free, and not pay a second toll." By a statute of the 59 G. 3 the tolls imposed by the above statute were repealed, and instead of them (as to the tolls on carriages), a toll of sixpence "for *every horse drawing* any coach, berlin," &c., was imposed; and it was further enacted that all the clauses, &c., of the prior Act should remain in force except where they were actually repealed or varied by the new statute. It appeared that the plaintiff's stage-coach (subsequent to the passing of the new statute), drawn by four horses, had passed through one of the toll gates in the morning, and paid the toll for a coach drawn by four horses; and that the *same horses*, drawing a *different coach*, repassed in the

course of the same day. It was decided, that no second toll was payable, notwithstanding the latter statute imposed the toll on the horses and not on the carriage. The Court said, they must construe the exemption clause in the 38 G. 3, with reference to the new mode of imposing the toll provided for by the 59 G. 3, as if that had been originally the mode prescribed by the 38 G. 3; and consequently the plaintiff was not liable to a second payment of toll.

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Norris v. Poate, 3 Bing. 41.—1822.

The 12 G. 3 provided that certain tolls should be paid “for *every horse &c.*, drawing any stage-coach;” and by a subsequent clause it was enacted, “that, if any person should have paid the toll for the passing of any cattle or carriage through any turnpike gate on the road, he should, on producing a ticket denoting such payment, be permitted to pass and repass through the same gate with the same cattle or carriage, toll free, at any time during the same day.” It appeared that a stage-coach drawn by four horses passed through and paid the toll at a gate in the morning: and in the evening of the same day the *same horses* repassed, drawing a *different coach* (all belonging to the same proprietor), and driven by a *different coachman*. The Court held, that the proprietor was not liable to pay a second toll; observing, that it was intended that a party should pay only once in the same day *for the same horses*. It was perfectly plain that the toll was imposed on the horses, and not on the carriage; and as to the person attending, the coachmen were employed by the same proprietor, and the proprietor was always attending, and responsible in the person of his coachman.

Similar question.

Hopkins v. Thorogood, 2 B. & Ad. 916.—1831.

By a turnpike Act, a certain toll was to be taken at every turnpike on the road from W. to O., for four horses drawing any carriage, &c. A subsequent section provided, that no person should pay toll more than once in the same day for passing or re-passing with the same horses or carriages through any of the turnpikes, but that every person after having paid toll once, and producing a ticket, should pass with the same horses and carriages toll free during such day. In July, 1828, the defendant, who was a stage coach proprietor, paid the toll at one gate, and, before the coach arrived at the other, changed horses, and then refused to pay the toll at the second gate, contending that the production of a ticket exempted him from the second payment, notwithstanding the change of horses. The Court held that a second toll was payable.

Similar question.

Lord Tenterden, C. J.—There are two modes of imposing toll in Acts of Parliament. In some they are imposed on the carriage; in others, on the horses drawing the carriage. Of late years, the

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latter is the more usual course, it being more favourable to those who manage the road. Here the toll is imposed on the horses drawing the carriage. If the question had been, whether a second toll would be payable in respect of the same horses drawing a different carriage, the arguments urged on the part of the defendant would have considerable weight, because the question would then turn entirely on the 20th section, which is ambiguous; but we are not called upon to decide that. Here the only question is, whether a second toll is payable in respect of different horses? It seems to me, that, as the toll is imposed expressly on the horses, a second toll is payable on the same day in respect of different horses drawing the same carriage. By the 19th section a toll would be clearly payable at every turnpike gate for every three or four horses drawing any carriage. A second toll would, by this section, have become payable at the Whitechapel gate. But it is said, that the defendant, having paid a toll at the Woodford Bridge gate, is by the 20th section exempted from the payment of a second toll at the Whitechapel gate, though he passed through that gate with different horses, because he passed with the same carriage. The language of that section is very ambiguous, and the meaning of it much too doubtful to prevail against the plain meaning of the clause imposing the toll. The judgment of the Court must, therefore, be for the plaintiff.

Parke, J.—In construing the Act, the true point to look at is the subject matter on which the toll is imposed, which in this case is the horses. The different parts of the 20th section are inconsistent with each other; and, taken as a whole, it is without any definite meaning. The safer course, therefore, is to look to the plain meaning of the clause imposing the toll; and according to that, a toll was demandable at the *Whitechapel* turnpike gate in respect of different horses, though drawing the same carriage.

Niblett v. Pottow, 1 Bing. N. C. 81.—1834.

Similar question.

By a local Act a toll was imposed on horses *drawing carriages*; for default of payment the collector was authorised to distrain any *horse or carriage upon which toll was imposed* by that Act. No person was to pay more than once a day in respect of any *carriage* or any horse, and no toll was to be taken in respect of any *carriage*, horse, or beast conveying materials for the road. Held, that the toll was imposed on the horse only, and not on the combination of carriage and horse; and that the same horse passing a second time the same day, with a different carriage and different passengers, was exempt from toll.

Tindal, C. J.—It is unnecessary on the present occasion to refer to the various cases determined on other Acts of Parliament; it is sufficient to look at this Act, and apply a plain understanding to it, always remembering that we are not affirmatively to impose a toll, unless the language of the legislature be clear. The ques-

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tion here is, whether a second toll is imposed on the same horses passing the same day with a different carriage. It is said that this depends on the clause of exemption in the statute 39 G. 3. It may be so; but we must first look at the section in 58 G. 3, which imposes the toll: "for every *horse* or other beast *drawing any waggon*, cart, or other such carriage, the sum of 6*d.*; for every *horse* or other beast *drawing any cart*, or other carriage, of whatever description, the sum of 4½*d.*; for every horse or other beast, laden or unladen, and *not drawing*, the sum of 1½*d.*" Looking no further, can any one doubt whether the toll is imposed on the animal or the carriage? In many Acts the toll is imposed specifically on the carriage. If the legislature be aware that words so different must be used when that is intended, why are we to suppose that the horse is not meant here?

It is said, look at the clause of exemption: "that no person shall be subject or liable to pay any of the tolls hereby granted more than once in any one day, to be computed from twelve o'clock at night to twelve o'clock the succeeding night, within each district, for or in respect of any *carriage*, or any *horse*, mare, gelding, or other cattle passing through all or any turnpike or turnpikes continued or erected by virtue of this Act within this district, such person producing a ticket denoting that the respective tolls have been paid on that day." To which I answer, although it may be difficult to give an explicit meaning to the word carriage where no toll has been imposed on the carriage, we can never give it the meaning required by the defendant, when there is a toll directly and affirmatively laid on the horse.

It is then said, that there are other clauses in which the word carriage occurs, and in which it will be difficult to attach any meaning to the word, unless a carriage be the subject of toll. "If any person or persons subject to the payment of any of the said tolls shall, after demand thereof made, neglect or refuse to pay the same or any part thereof, it shall be lawful for the person or persons appointed to collect the tolls to seize and distrain any horse or horses or other cattle, together with their bridles, saddles, gears, harness, or accoutrements, or their loading, or to stop, seize, and distrain any carriage, with its loading, upon which such toll is by this Act imposed." We might reasonably say, that as the power of distress first specifies the horse upon which the toll has previously been imposed, the inference is, that the words, "upon which such toll is by this Act imposed," apply to the horse and not to the carriage, and that the power of distress is extended to the carriage only for the sake of further security. But it is unnecessary to give a construction to every clause in which the word carriage is incidentally used, when it is plain that the toll is imposed on horses.

Park, J.—Every case of this sort must depend on the words of the Act imposing the toll: the cases are numerous, because such Acts are often incorrectly drawn; and as most tolls are let out, the lessees, who desire to make all they can, will try their hand again, although the point may have been decided. But I

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cannot distinguish this case from *Gray v. Shilling*; and though, in the other cases which have been mentioned, there may be here and there expressions which suit the defendant, yet, in substance, the cases all coincide with *Gray v. Shilling*.

Fenton v. Swallow, 1 Ad. & E. 723.—1834.

Question on the construction of a contract for tolls, as to horses, &c. passing more than once in a day toll free.

A local turnpike Act imposed tolls for every horse drawing any coach, and other tolls upon every horse not drawing; it provided generally, that, if the tolls had in any one day been paid for the passing of any horse, such horse should on that day be permitted to repass once toll free; but enacted that the tolls for horses drawing any stage-coach should be payable every time of passing. The trustees let the tolls, with power to collect them according to the Act, and subject to such rules and restrictions as should be made by the trustees: and the lessee covenanted with the trustees to permit the owners of stage-coaches, waggons, &c. to pass in the following manner:—viz. horses drawing any such carriage, as thereinbefore mentioned, to be respectively allowed to pass along the road on payment of full toll going, and quarter toll returning, at any time during the same day.

Horses passed through a gate, drawing a stage coach, and full toll was paid for them; they returned the same day, drawing another stage coach, and the lessee exacted full toll. Held, that the lessee ought, by his covenant, to have demanded quarter toll only.

Lord *Denman*, C. J.—I think the meaning is, that there shall be a liability to only quarter toll in the case of horses, upon which toll has been paid, returning in the same day, drawing carriages of the same description as those with which they passed through before. The word “such” must have this large construction. If it was meant that a second toll should be imposed, the words are not sufficiently strong to effectuate the intention. This decision will not clash with any of the previous cases, all of which were decided upon their own circumstances. In *Waterhouse v. Keen*, 1 B. & C. 200, the Court seem to have taken our view of the case.

Littledale, J.—The general words imposing the tolls, and the first proviso, if taken together, and without reference to what follows, would seem to prevent the taking of a second toll in any case for a horse passing twice on the same day; for the toll is imposed upon each horse drawing a coach: and then comes a proviso that any horse, upon which toll has been paid once in the day, shall be permitted to re-pass once toll free. So far, there is no limitation of the exemption; the horse may be led, driven, or ridden, or may be drawing or not drawing. Then comes a proviso, that the tolls payable in respect of horses drawing any stage coach shall be payable every time of passing; but under the General Turnpike Act, 3 G. 4, c. 126, s. 43, the trustees have power to reduce the tolls; and this power is general, and not

limited to horses returning with the same carriage. Then, by the regulations imposed here, the toll is reduced on horses returning; and we must presume that the covenant is in pursuance of the Act. The question then arises, whether such carriage means the same carriage, or, generally, a carriage of the same nature; I think the meaning is not confined to the identical carriage. Therefore, upon the construction of the Act, I think this was a case under the first clause of exemption as to the horses; and that the liability imposed by the subsequent proviso is reduced, according to the General Turnpike Act, in the case of horses returning on the same day with a carriage of the same description.

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Rex v. Bury and Stratton Roads Trustees, 6 D. & R. 369;
4 B. & C. 361.—1825.

A turnpike Act authorised the trustees to take at each and every toll-bar on the whole line of roads a certain scale of tolls; and by another section they were authorised, at a meeting, upon notice thereof to be affixed on all the gates, to reduce or advance all or any of the tolls granted by the Act. It was held, that the trustees had no power to reduce or advance the tolls at one only of the gates on their line of road, but they must reduce or advance them at *all* the gates equally. The case came before the Court on an application for a mandamus commanding the trustees to call a meeting for the purpose of establishing a *uniform* rate of tolls to be taken at the toll-gates on the roads under their management. The Court said, that it was quite clear that the power given by the Act was only to reduce the tolls at *all* the different gates. As the notice was to be affixed upon all the gates, and as the toll granted by the Act was one uniform toll, to be collected at all the gates, the legislature must have intended to give the trustees power to reduce or advance all the tolls, or any one of the descriptions of toll which were authorised to be taken, at all the gates; but they did not intend to give them power to reduce or advance them at one gate and not at another. The mandamus was therefore ordered to issue.

[But see the preceding case, p. 420.]

Pearse v. Morrice, 4 Nev. & M. 48; 2 Ad. & E. 84.—1834.

This was a question as to the validity of a lease of tolls, in which the rent had been reserved to the *trustees* or *their treasurer*, although the local Act relating to the road, passed prior to the general Act, provided that in leases of the tolls the rents should be made payable to *the treasurer*, and that in default thereof every such lease should be *null and void to all intents and purposes whatsoever*. It was contended that the words “null and void to all in-

Question as to the validity of a lease of tolls.

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tents and purposes" are to be construed as meaning not *absolutely void*, but *voidable* only; and that the provision in the local Act, requiring the rent to be paid to the treasurer, is in effect repealed by the General Turnpike Acts, 3 G. 4, c. 126, and 4 G. 4, c. 95, which authorise the trustees to let the tolls under such an agreement as they think proper. It was likewise contended, that the lessees' surety could not take advantage of this defect, as the lessees had taken the tolls for several years under the lease. In this case the lease concluded in the following words: "in witness whereof to one part of these presents, intended to remain in the hands of the said E. Riches, the said trustees, parties hereto, have set their hands and seals; and to the other part thereof, intended to remain in the hands of the said trustees, the said E. Riches, G. M., and J. M. (the defendant), have set their hands and seals, the day and year first above written." The counterpart indenture was executed by E. Riches and by the defendant, *but was not executed by any of the trustees*, or by the clerk or treasurer; and no indenture was produced executed by any of the trustees, or by the clerk or treasurer. The question as stated for the opinion of the Court was, whether the action was maintainable; first, the indenture produced not having been executed by the trustees, or by the clerk or treasurer; and secondly, the rent reserved being made payable to the trustees or their treasurer, and not to the treasurer only.

Lord Denman, C. J.—It was unfortunate that the trustees did not give notice to produce the deed in the hands of the lessee; but I believe none of the Court are disposed to think the case need turn upon the point as to the admissibility in evidence of the counterpart. There may be some question whether a recital in the subscribing part of the counterpart, that the deed has been executed under the hands and seals of the trustees, would not operate as an estoppel against a party executing the counterpart.

The other point appears to me to be one of very great importance: that the Act requires that every lease of tolls shall make the rent payable to "the treasurer." That, I think, must be taken to be "exclusive of all other persons;" it can never be enough to say, that the rent may be made payable to the treasurer, or the trustees, or some one of their body. To have the rent payable to a large number would be very inconvenient, and a single individual might possibly not be perfectly solvent. The question then is, whether full effect is to be given to words such as these: "that any lease that is executed in contravention of these provisions shall be null and void to all intents and purposes whatever." It certainly is very extraordinary, that there should be cases to shew that words of that extent should not receive their natural and obvious meaning; but on the principle that a party is not *bound* to take advantage of any proviso in his own favour, it has been held in *settlement cases* that the word "void" means "voidable" only. And this same construction has been applied to agreements, where a party could not take advantage of a proviso in his own favour, without committing some offence

against public policy. But here there is nothing of that sort. Indeed, it might be said that there is something which may be called "public policy," demanding the enforcement of this clause. The interests of the proprietors at large are intended to be protected by the provision, which requires that one particular individual of responsibility shall be the party to whom the rent shall be made payable. There is therefore the best public reason why this provision in the Act, making a lease *void* in such case, should be carried into effect, if the rent is by that lease made payable to any other than the individual particularly pointed out.

But it is urged, that the general Act repeals this clause, because it says that the trustees executing leases shall comply with certain directions as to the notice to be given, the mode of bidding, and other things, and then goes on to say, "the rent shall be reserved in such manner, and on such conditions, as the trustees or commissioners shall think fit." But those words were not intended to repeal any restrictions, particularly a restriction founded upon a good principle contained in any former Act. The only intention was, that the trustees should appoint such conditions, and make the rent payable in such manner as they thought proper, *consistently* with the powers vested in them, and the duties imposed upon them by *other* Acts. Those words, therefore, in the general Act cannot be supposed to have been used with an intention to repeal the provision in the 28th section of this local Act, which provision, therefore, stands in full force, and ought, upon every principle of reason, to be applied to this case. This lease is therefore void.

With regard to the *time* of taking advantage of the invalidity of the lease, I cannot understand why, if the lease be void, any party should not take advantage of its invalidity at any period.

Taunton, J.—The distinction between directory and imperative statutes has been long known; I understand the distinction to be, that a clause is directory where the provisions contain mere matter of form; but not so where they are followed by such words as are used here, viz. that anything done contrary to such provisions shall be null and void to all intents.—The defendant's counsel has suggested that this lease may be a good lease under 3 G. 4, c. 126. It is true that the intention of the legislature, as it appears from the preamble to sect. 4, was to establish one uniform code of laws for the management and maintenance of turnpike roads throughout the kingdom (an expectation in which the legislature was somewhat disappointed, since in the next session it became necessary to pass a new statute, containing a great number of clauses, to amend the former); but I do not see how the uniformity contemplated in the statute is disturbed by giving this local Act its proper operation. If, indeed, the general Act had contained provisions directly repugnant to the local Act, I should have said this Act must yield; but upon comparing the clauses, that does not appear to be the case. *Patteson, J.*, was of the same opinion as to the second question; and *Williams, J.*, also concurred.

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Shepherd v. Hodsmen, 21 Law J., Q. B., 263.—1852.

Same question.

An agreement for the letting of the tolls of a turnpike road was signed by the clerk to the trustees. It recited that A. B. was the highest bidder for, and had become the renter of, certain tolls, and stated that the clerk, on behalf of the trustees, did thereby agree to let, and A. B. did thereby agree to take, the tolls and toll-house. This was held to be a sufficient compliance with the 55th and 57th sections of the 3 G. 4, c. 126. The argument urged against it was, that the latter section only authorised the *signing* by the clerk of an agreement made in the names of the trustees themselves. It was further objected, that the agreement was invalid by force of the statute 8 & 9 Vict. c. 106, s. 3, which provides that a "lease required by law to be in writing of any tenements or hereditaments," shall be void, unless made by deed; but the answer given by the Court to this objection was, that this statute applied only to leases which were required to be in writing by the Statute of Frauds.

Lee v. Nixon and Davison, 1 Ad. & E. 201; 3 Nev. & M. 441—1834.

Construction of a contract entered into by a contractor and his surety.

The trustees of a turnpike road, at a meeting duly convened, let the tolls on the road to the defendant Nixon, and thereupon, by the direction of the chairman, Charles Head, as clerk to the trustees, filled up and signed a memorandum of agreement which was afterwards signed by Nixon and Davison. To shew that Head was clerk, the following minute of an order made by the trustees was read:—"John Bell, of &c., gentleman, and Charles Head, of &c., gentleman, having undertaken the office of clerk of the trustees of the said road and branches, ordered, that they be appointed to such office accordingly, at the yearly salary of 50*l*." Bell and Head were attornies and partners. The agreement stated, that Nixon having been the highest bidder for the tolls and gates, and having become the farmer of them at the sum of 692*l*. for one year from &c., and having produced Robert Davison, of &c., and J. M., of &c. (who did not execute), as sureties for the purpose above mentioned, the trustees, in pursuance of the authority vested in them, &c., had contracted and agreed, and did thereby by Charles Head, gent., their clerk, contract and agree with the said John Nixon to let, and J. N. did thereby agree to take the said tolls and gates for one year from &c., at the rent &c., subject to the conditions thereinbefore contained (which were certain conditions of letting prefixed to the agreement). The instrument then proceeded: "And the said John Nixon, as farmer or renter of the said tolls, and the said Robert Davison and J. M., as his sureties, do hereby severally promise, undertake, and agree to and with the said trustees, that" &c. The

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undertaking was, that Nixon should pay the rent at the appointed times, and perform and keep the above-mentioned conditions. Nixon occupied for a year, but left part of the rent unpaid, and an action of assumpsit was brought against him and the other defendant for recovery of the balance. At the trial, a verdict was found for the plaintiff, subject to a special case, on the argument of which two questions were raised: first, whether the agreement was valid, being signed by one trustee only; and second, whether the contract was a joint contract, so that the lessee and his surety might be sued in the same action, or a several one.

The object in raising the first question was to induce the Court to review the decision in *Bell v. Nixon*, 9 Bing. 393, *ante*, p. 48; but the Court gave no opinion on this point, the decision on the other question rendering it unnecessary.

Denman, C. J.—If we had been called upon to decide the first point, I should have desired further time for consideration; but this is unnecessary, because the second point is clear. The word “severally” in this contract, if it has any meaning, must have that which the defendants ascribe to it. Assuming that the plaintiff is entitled to sue upon the agreement, he can only sue in the manner in which the parties have made themselves liable. There are, indeed, reasons for viewing the case in the way suggested by the plaintiff; but they are not strong enough to counterbalance those on the other side. The defendants have chosen to protect themselves in a particular way in making this agreement, and must have the benefit of it.

Littledale, J.—The words used in this case shew that the parties meant to render themselves liable separately and not jointly. There have been cases where, from something in the context, words which would appear to have that effect have been held to constitute a joint contract, and in others, though words were used which seemed to indicate a joint liability, the opposite construction has prevailed, as in *Collins v. Prosser*, 1 B. & C. 682. But no sufficient reason is given here for any such mode of interpretation. It was more natural, that the parties should wish to contract severally than otherwise; and, if the second surety had executed the agreement, it was probable that he would have chosen to bind himself jointly with Davison, and separately from the principal. With respect to the point decided in the Court of Common Pleas, it is unnecessary to say anything. The defendants are entitled to judgment.

Barnes v. White, 1 C. B. 192.—1845.

A conviction under the 41st section of the 3 G. 4, c. 126, *Evasion of tolls*, stated, that J. B., on &c., in the parish of C., on the turnpike road before then made, and being under the authority of an Act of Parliament, made &c. [reciting the title of a local turnpike Act], “with a certain carriage, to wit, a cart, drawn by one horse,

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did unlawfully, fraudulently, and forcibly pass through a certain toll-gate then and there legally situate, and being under the authority of the said Act, by reason whereof the payment of a certain toll, to wit, the sum of 3*d.*, then and there legally due, demanded, and payable under the authority of the said Act, by and from the said J. B., for and in respect of the said carriage so drawn as aforesaid, was avoided, contrary to the form of the statute," 3 G. 4. c. 126. This conviction was held sufficient, as following the form given in the schedule to that Act (*ante*, p. 151), though it contained no adjudication of payment of the penalty imposed by sect. 41 for such offence.

The distress warrant issued thereon stated, that the said J. B., on &c., in the parish of C. aforesaid, "with a certain carriage, to wit, a cart, drawn by one horse, the said cart then and there having two wheels, and the fellies of such wheels being then and there of less breadth than three inches, to wit, of the width of two inches, did unlawfully, fraudulently, and forcibly pass through a certain toll-gate then and there situate and being, by means whereof the payment of a certain toll, to wit, the sum of 3*d.*, then and there legally due and payable by and from the said J. B., for and in respect of the said carriage so drawn as aforesaid, was avoided, contrary to the statutes in that case made and provided;" and it directed that the penalty should be paid, one moiety to the informer, and the other moiety to "the treasurer of the commissioners for amending the roads and highways in the Isle of Wight, being the place where the said offence was committed, returning the overplus, on demand, to him the said J. B., the reasonable charges of taking, keeping, and selling the said distress being deducted."

Objections were also taken to this warrant: One, that it did not follow the precise terms of the conviction; but it was held that it followed it sufficiently in substance. Another, that there was not a proper appropriation of the penalty, inasmuch as in the form given by the schedule to the 3 G. 4, c. 126 (*ante*, p. 151), it is directed to be paid, one moiety to the informer, and the other moiety to "*the surveyor* of the turnpike-road where the said offence &c. happened;" and, in sect. 141 of that Act, to "the treasurer or treasurers to the trustees or commissioners for repairing and maintaining *the road on which* such offence was committed." This objection also was overruled, s. 148 being called in aid of the warrant.

The conviction and warrant were also held to disclose a legal cause of forfeiture, in the statement that the defendant passed in the manner described through a *toll-gate*, without stating it to be a toll-gate situate on a turnpike road; inasmuch as the 41st section, and other clauses of the 3 G. 4, c. 126, use the word "toll-gate" alone as importing a toll-gate on a turnpike road.

Fairtitle d. Mytton v. Gilbert, 2 T. R. 169.—1787.

In this case (before the present general laws) it was held that the trustees of a local turnpike Act, which authorised them to erect toll-houses and mortgage the tolls, and which declared that there should be no priority among the creditors, had no power to mortgage the toll-houses or gates, and if in fact they had made such mortgage, and an ejectment was brought against them by the mortgagee, they were not estopped by their deed from insisting that the Act gave them no such power.

Question as to the mortgage of tolls, toll-houses, &c.

Doe d. Bancks v. Booth, 2 Bos. & P. 219.—1800.

The trustees under a turnpike Act having demised to one of several mortgagees such proportion of the tolls arising from the road, and of the toll-houses and toll-gates for collecting the same, as the sum advanced by him bore to the whole sum raised on the credit of the tolls, and the mortgagee brought ejectment for the toll-gates, in order to repay himself the interest due to him, it was argued, on the part of the defendant, that, if any one mortgagee were allowed to recover, he would gain a priority over the rest; and the case of *Fairtitle v. Gilbert* was cited, where the Court had expressed an opinion, that, for the encouragement and security of all persons who were willing to advance money, it was necessary that the collection of the tolls should remain with the trustees; and it was suggested that the mortgagees had other remedies. But Lord *Eldon*, then Lord Chief Justice, in delivering the opinion of the Court, “denied that any such priority would be gained, and said that he should have been inclined to hold that whatever were the form of the demise, it could only operate so as to effectuate the act, that is, so that every other creditor should receive his due proportion, for which purpose the mortgagee must have stood in the situation of bailiff of the rest of the creditors, as to all except his own proportion: the money advanced by the mortgagee would be very ill secured if his only remedy was either an application to the vindictive power of the Court of King’s Bench, or a suit in Chancery, in which all the other thirty-five mortgagees must be made parties. With respect to the action for money had and received, it would be a sufficient defence for the trustees to shew that they had distributed all the money received, according to the provisions of the Act.” (But see *Pardoe v. Price*, post.)

Construction of a mortgage of tolls.

Doe d. Baggally v. Hares, 4 B. & Ad. 435; 1 N. & M. 237.—1833.

Against an action of ejectment by a mortgagee of tolls and toll-houses against the lessee, the defence was, that one of the persons who had executed the mortgage was not duly appointed

Mortgage valid, al-

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 though one
 of the trus-
 tees was not
 appointed ac-
 cording to
 the local Act.

a trustee, he not having been elected according to the provisions of the local Act. But this was overruled on the ground stated, ante, p. 124, n. (k). It was contended, that, in consequence of the illegality of the appointment, the trustees were not estopped from saying that the deed was not their own act, as in *Fairtitle v. Gilbert*; but on this point no decided opinion was given, the proof of acting as trustee, &c. being held sufficient: and Lord Denman, C. J., said, I am happy that we can come to that conclusion on legal grounds, for it would be extremely mischievous as affecting the value of these securities if an objection like the present could prevail.

Doe d. Thompson v. Lediard,
 4 B. & Ad. 137; 1 Nev. & M. 683.—1832.

As to priority
 under a
 mortgage of
 tolls.

By a local turnpike Act, certain tolls were made subject to the payment of the monies borrowed and to be borrowed thereupon. The trustees granted mortgages of such tolls in the form given by the General Turnpike Act, 3 G. 4, c. 126, s. 81, conveying to each creditor such proportion of the tolls, and the toll-gates and toll-houses, as the money advanced by him bore, or should bear, to the whole sum due, or to become due, on that security. By a subsequent Act for making a new branch road, the former Act was continued, and certain tolls were granted in respect of the new branch, to be applied like the former, and to be subject to the debts incurred on the credit of the former tolls; and it was enacted that all monies due on such credit should be entitled to a "preference and priority of charge and payment," before any monies advanced under this Act for making the new branch. On ejectment for the tolls and toll-houses by the holder of a mortgage (framed like the former ones), for monies lent to complete the branch-road,—Held, that the words "priority of charge" did not prevent this mortgagee from acquiring a legal estate in the subjects (3 G. 4, c. 126, s. 49), only remaining accountable to the other mortgagees for such portion of the tolls as they were entitled to in respect of their advances. The Court said, that if the legislature intended to vest the legal estate in the other creditors and not in him, that intention had not been accomplished, and that the General Turnpike Act left it open to any person making subsequent advances to come in for a portion of the legal estate; and that the word "charge" in the subsequent local Act related only to the application of the tolls, and not to the legal estate in them and the premises here claimed; and therefore that the plaintiff was entitled to judgment.

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—*Doe d. Walton v. Penfold*, 3 Q. B. 757.—1842.

The plaintiff, a mortgagee of tolls and toll-houses and gates, whose mortgage was made under the 81st section of the 3 Geo. 4, c. 126, was held (following out the doctrine of the preceding case) to be entitled to recover, on his own demise only, the toll-houses and gates in an action of ejectment, although there were prior unsatisfied mortgages, at the same time, upon the tolls, toll-houses, and gates of the same trust. *Wightman*, J., said—"Section 49 provides for difficulties that it was supposed might intervene in bringing ejectment, and enables any party to recover on his own demise only; and it is not necessary that all should join, so as to make an entire title to the whole: one may get possession of the whole, but then the statute obliges him to account."

Doe d. Butt v. Rous, 1 E. & B. 419.—1853.

In this case the lessor of the plaintiff, Butt, a mortgagee of tolls, brought ejectment against the trustees under sect. 49, on his own demise. After the commencement of his action, another mortgagee, who also was one of the trustees, brought another ejectment, laying the demise on a day prior to that in Butt's action; and the trustees confessed judgment therein before the trial of Butt's action. But this was held not to be sufficient to prevent Butt from having a verdict in his action; whether he might be entitled to an *habere facias* thereon was another question; but the action, being rightly brought in the first instance, could not be defeated by subsequent proceedings to which he was not privy.

Doe d. Levy v. Horne, 3 Q. B. 757.—1842.

By a local Act for building the bridge over the Thames at Staines, the commissioners were empowered to raise money by mortgage, and to convey, as a security for the repayment thereof, "the said bridge, and the toll-houses, and all the tolls, and all right, title, and interest in the same," according to a form of mortgage contained in the Act, to hold the same till the money borrowed, with interest, should be paid and satisfied. The Act did not make any provision as to the bringing of an ejectment, or the parties recovering on their own demise only, as in sect. 49 of the General Turnpike Act. A mortgagee under the Act (not the first) brought ejectment against the clerk to the commissioners (by whom the Act said that they were to sue and be sued) to recover possession of the bridge, toll-houses, and tolls. It was objected that the commissioners, being persons who were acting not for their own benefit, but in a public capacity, were not

Mortgage of
tolls.—
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estopped by their deed executed to the plaintiff from setting up a prior mortgage to defeat his action, and they sought to do so; but the Court would not allow it. They distinguished the case from that of *Fairtitle v. Gilbert*, ante, p. 427, on the ground that the Act in question in that case, which it was presumed ought to be known to both the contracting parties, prevented the trustees from making any such mortgage as the plaintiff there relied on; whereas no such presumption could be made as to any party's knowledge, in the present case, that a prior mortgage had been made. And the validity of the principle which appears to have been sanctioned in *Fairtitle v. Gilbert*, that persons in the situation of turnpike commissioners were not bound by the general rules of law relating to estoppels, seems to be seriously questioned by the Court.

Pardoe v. Price, 13 M. & W. 267.—1844.

Same v. Same, 16 M. & W. 451.—1847.

Action by
mortgagee
for interest.

The first of these cases was an action of debt for money had and received, in which the plaintiff, a mortgagee of turnpike tolls, sought to recover from the trustees (through their clerk) arrears of interest due upon his mortgage. It was proved by him, that in each year during which the arrears accrued due, the amount of tolls received exceeded the interest due on all the monies borrowed on the credit of the tolls; and that the trustees had, from time to time, in their annual statements of accounts, stated the amount of interest due to the plaintiff, and shewn a balance in their hands sufficient to discharge it. But the action was held not to be maintainable, on the ground that the Turnpike Acts do not impose on trustees any duty to pay the interest to the mortgagees, and that no monies had been specially appropriated to the payment of interest to the plaintiff. "If the trustees pay any," said Mr. Baron Parke in giving judgment, "they ought in justice to pay all equally; but the difficulty is, that there is no enactment in any of the statutes, which makes it obligatory on the trustees, while they remain in possession of the tolls, at any particular time to set apart any portion of the money received towards keeping down the interest, so as to give the creditors a legal right to insist on its payment. If they have a surplus after paying the expenses of the repairs, there is no provision that it shall be immediately applied to pay interest. It is competent to them to expend it, notwithstanding any of the enactments in the statute, on the further improvement of the road; and the creditor has no legal right given him by any of the statutes to any part of it." And "the result is, that, under the circumstances stated in this case, the plaintiff's only remedy is by enforcing his rights as mortgagor of the tolls by bill in equity, or by determining the possession of the tolls by the trustees in such manner as he may be advised, and so repaying himself his principal and interest."

In the latter of these cases, the plaintiff (who had brought a second action of the same nature) relied upon a local Act relating to the trust in question, which was passed after the commencement of the first action, and by which the trustees were bound to apply all monies received by them by virtue of the Act on the roads included in the Act, 1st, in paying the expenses incident to the obtaining of the Act; 2ndly, *in paying any interest* which might from time to time be owing in respect of money which might have been borrowed on the credit of the tolls authorised to be taken by former Acts thereby repealed; 3rdly, in the repair of the roads; 4thly, in paying any interest on monies which should thereafter be borrowed on the credit of the tolls; and, lastly, in reducing and discharging the principal sums which should thereafter be so borrowed. But it was held, that, notwithstanding the directions of this Act, and although it appeared that the expenses incident to the obtaining of the Act had been paid, and that the trustees had in their hands sufficient money for the payment of the arrears of interest on monies theretofore borrowed, the plaintiff, the mortgagee of the tolls, could not maintain his action. "It is quite clear," said *Rolfe*, B., in the judgment, "that so long as no other relation subsists between two parties except that of trustee and cestui que trust, no action can be maintained by the latter against the former for any money in his hands. The trustee is, in such a case, the only person entitled at law to the money, and the remedy of the cestui que trust is exclusively in a Court of equity." "Now, on looking to the Act, it appears quite clear that all the tolls were received by these trustees in their character of trustees, and in that character only."

NUISANCES,
&c.
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The dictum of Lord *Eldon*, in *Doe d. Banks v. Booth*, that the assignment of tolls alone gives a personal interest, in respect of which an action for money had and received might be maintained, must be taken to be materially qualified by these cases, if not overruled.

NUISANCES AND OTHER OFFENCES.

Rex v. Gregory, 5 B. & Ad. 555.—1834.

An Act of Parliament prohibited the erection or continuance of any building within ten feet of the road, and declared that the footpaths should be subject to the Act, and be part of the road. It further enacted, that if any such building should be erected or continued contrary to the Act, it should be deemed a common nuisance. By another clause, two magistrates were empowered to convict the proprietor and occupier of such building, and to make an order for the removal thereof:

What is a
nuisance,
and how it
may be
abated.

It was held, that, notwithstanding the latter clause, the party who erected or continued a building contrary to the Act, might be indicted for a nuisance.

NUISANCES,
&c.

It was also held, that an open shop, having its front built on the foundation of an old wall immediately adjoining the footpath, and connected by a roof with the front of a house which was more than ten feet from the road, was a building within the meaning of the Act.

Rex v. Morris, 1 B. & Ad. 441.—1830.

A railway
obstructing
a turnpike
road is in-
dictable.

Where the proprietor of a colliery made a railroad from it, 400 yards long, to a sea-port town, by which means the turnpike road was narrowed so far that in some places there was not a clear space for two carriages to pass, and the owner of the railroad allowed the public to use it on paying a toll; on an indictment for obstructing the highway, it was held, that the facility given to the general traffic with the sea-port, and particularly to the conveyance of coals, &c., was not such a convenience as justified the obstruction of the turnpike road; for no man has a right to tell the public, that they shall discontinue the use of such carriages as they have been accustomed to employ, and adopt another kind in order to pass along a new description of road, paying him for the liberty of doing so.

Rex v. Pease, 4 B. & Ad. 30; 1 Nev. & M. 690.—1832.

A railway is
not a nui-
sance when
worked ac-
cording to
the Act.

In this case it was held not to be an indictable nuisance for a railway company under the particular provisions of an Act of Parliament, to allow locomotive engines to travel on it to the annoyance of passengers on an adjoining highway, although the owners of the railroad had not taken any precautions by altering the course of the railroad, or by the erection of fences or screens of sufficient height to exclude the view of the engines from the passengers on the highway. This case is cited on account of the observations made by the Court upon the construction of Acts of this description. The Act recited that a railway between certain points would be of great public utility, and would materially assist the agricultural interest, and the traffic of the country; and power was given to the company to make such railway, according to a plan deposited with the clerk of the peace, from which they were not to deviate more than a hundred yards, and to use locomotive engines upon the railway. The Court said, "The words of the clause in question clearly give the company the unqualified authority to use the engines, and we are to construe provisions in Acts of Parliament according to the ordinary sense of the words, unless such construction would lead to some unreasonable result, or be inconsistent with or contrary to the declared or implied intention of the framers of the law, in which case the grammatical sense of the words may be extended or modified."

Kemp v. Burt, 4 B. & Ad. 425.—1833.

In an action against attornies for negligence, it appeared that the plaintiff employed the defendant to conduct an action for him against a surveyor of turnpike roads, for alleged trespasses. The surveyor had seized and impounded plaintiff's sheep, as having been found straying on the road: the plaintiff regained possession of them by promising the pound-keeper to pay the proper charges, and drove them home; on the same day the surveyor retook the sheep in the plaintiff's field, and again impounded them. The first and second taking were in Surrey, but on an intermediate day the sheep had escaped, and been impounded in Sussex. The Turnpike Act, 4 G. 4, c. 95, s. 75, only authorises surveyors to impound sheep found on a turnpike road. The General Turnpike Act, 3 G. 4, c. 126, s. 147, (incorporated in the above statute by reference) requires that actions against any person for any thing done in pursuance of the Act, shall be commenced within three months, and the venue laid in the county where the cause of action arose.

Impounding
cattle, &c.

The attornies commenced the action within three months, and had a declaration drawn by counsel, who returned it with an observation indorsed, that it would have been prudent to join two other parties. The attornies thereupon (with the plaintiff's assent) discontinued the action, and brought another after the expiration of the three months, laying the venue in Sussex. The declaration was settled by counsel, and the case afterwards submitted to a special pleader, who gave as his opinion, that the protecting clause of 3 G. 4, c. 126, did not apply to the trespass in seizing the sheep in the plaintiff's field. The plaintiff went to trial, and was nonsuited, on account of the action being out of time and the venue improper, with leave to move, which was done without success.

Held, that this was not a case of actionable negligence in the attornies. *Littledale*, J., in giving judgment, observed, "It has been taken for granted by the plaintiff's counsel, that the defendant in the former action was protected by the 3 G. 4, c. 126, s. 147, and 4 G. 4, c. 95, ss. 75 and 88; but as upon the second occasion the sheep were not taken upon the highway, according to the 75th section of the latter statute, it is clear that he would not have been within the letter of 3 G. 4, c. 126, s. 147, as a person sued 'for anything done in pursuance of that Act;' though he might have been entitled to the benefit of that liberal construction which the Courts have sometimes, but not always, given to clauses so worded. There are cases where officers have been held to be within the protection of such clauses, though they have not acted strictly under the authority of the statutes; and others where such a construction has not been admitted, as where actions have been brought to recover back money improperly

ACTIONS, &c. taken (b). But an attorney is not liable for gross negligence, if, looking at the express words of the statutes in question here, he has supposed that they would be literally followed; he is not bound to know in what cases the Court would put a more liberal construction upon them.

ACTIONS, &c.

Emery v. Day, 1 Cr. M. & R. 245.—1834.

Limitation of actions as to contracts. A local turnpike Act enacted that all monies, &c. should be vested in the trustees, to be applied in the order and manner following: First, in paying the costs, charges, &c. in obtaining the Act, &c.; in the second place, in defraying the expenses of erecting or providing turnpikes, toll-houses, and other buildings, and repairing the same; and of erecting and making necessary and convenient bridges, &c., and of repairing the road, &c., and otherwise executing the purposes, &c. of the Act; and lastly, in paying the interest and reducing the principal of the money subscribed, &c. &c. In 1823, the plaintiff contracted with the trustees to build a toll-house, which he accordingly completed in 1824. In 1829 the trustees had a meeting, and *verbally* ordered that money should be raised and the tradesmen paid.—Held, that the right of action accrued when the work was done, and not when the trustees were in funds; and that the statute of limitations since 9 G. 4, c. 14, was a bar, notwithstanding the verbal order in 1829.

Roberts v. Read, 16 East, 215.—1812.

Limitation of actions to an injury sustained under the Highway Act. This was an action on the case, brought against the surveyors of certain highways, on the General Highway Act (13 G. 3, c. 78, s. 81), for digging up so much of the soil near a wall as to undermine it. The Act required three calendar months' notice of action after the fact committed, whereas the falling of the wall did not occur until twelve months after the work was done by the defendants, although the work was the primary cause of injury. The action was held to have been well brought. *Per Cur.*—If this action had been trespass, the action must have been brought within three calendar months after the act of trespass complained of, viz. the undermining the wall; but, being an action on the case for consequential damages, the action was well brought within three calendar months after the wall fell, for that is the *gravamen*, and how could the damage be estimated before the injury actually occurred?

(b) See *Irving v. Wilson*, 4 T. R. 485; *Morgan v. Palmer*, 2 B. & C. 729.

Charlesworth v. Rudgard, 1 Crompt. 505; M. & R. 498.—1834.

By a local Act for paving, watching, lighting, and improving the city of L., commissioners were appointed for carrying the Act into effect, and a penalty was imposed upon such of them, as, being personally interested in the matter in question, should act as commissioners in the execution of the Act. One of the commissioners, being personally interested in the construction of a footpath opposite his own house, attended a meeting of the commissioners, and spoke upon the question of the mode of constructing such footpath. It was held, that this was evidence to go to the jury of *an acting* as a commissioner. It was also urged, that the defendant was entitled to the notice of action required by the local Act to be given; but the Court expressed a clear opinion, that the clauses only applied to what was done by virtue of the Act, and not to penalties for acting in direct contravention of it.

Notice of action, &c.

Oakley (Lord) v. Kensington Canal Company, 5 B. & Ad. 138. 1834.

By Acts of Parliament enabling a company to make and maintain a canal navigation, and to take lands for that purpose, making satisfaction, it was provided that the company should not take any garden ground without consent of the respective owners and occupiers, and that any action to be brought for anything done *in pursuance of those Acts* should be commenced within *six calendar months next after the fact should have been committed*; or if there should be a continuance of damages, then within six calendar months next after the committing of such damage should have ceased.

Limitation of action, &c.

The company wishing to take garden ground for the purpose of sloping the banks of the canal, told the occupier, or tenant, that they had obtained the consent of the owner's agent, without which the tenant would not have given them permission; but the statement was not true. They then paid him a sum which he demanded on account of a former transaction, after which they entered and sloped away the ground. The land in consequence was from thenceforth overflowed by the Thames at every high tide. For this damage the landlord sued the company more than six calendar months after the ground was taken and the tide was let in.

Held, that the injury was one for which an action should have been brought within six months from the taking away of the land; and that the defendants were within the protection of the limiting clause, inasmuch as the act complained of was really done for the purpose contemplated by the statutes, though, in the prosecution of that purpose, the defendants had been guilty of a misre-

ACTIONS, &c. presentation and of bad faith towards the occupier.—And see
 ——— *Jones v. Bird*, ante, p. 378.

Jones v. Gooday, 9 M. & W. 756.—1842.

Limitation of
 action, &c.

By a local Act (6 G. 4, c. lxx.), certain commissioners were empowered to cause any “present or future sewers, ditches, drains, &c., to be opened, enlarged, altered, or cleansed:” and it was enacted, that, in case any action should be brought against any person for anything done in pursuance of the Act, or in relation to the matters therein contained, the plaintiff should not recover in any such action, if tender of amends should have been made to him &c., or his attorney, by or on behalf of the defendant &c., before such action brought; and, in case no such tender should be made, that it should be lawful for the defendant, by leave of the Court, to pay money into Court; and, if the matter should appear to have been done in pursuance and under the authority of the Act, or after sufficient satisfaction made or tendered as aforesaid, then that the jury should find for the defendant.

The commissioners, of whom the defendant was one, appointed a committee to inspect a certain ditch, with a view to widening the same, and to report thereon. The committee having reported thereon in favour of widening the ditch, the commissioners appointed a second committee, of whom the defendant was one, to confer with a surveyor respecting the work, with power to two of them to act. The defendant, being afterwards told by the clerk to the commissioners that he might proceed without further instructions from the commissioners, took the plaintiff’s land for the purpose of widening the drain, without having given him notice or obtained his consent. The land was taken for the bona fide purpose of widening the drain. The defendant, before action, tendered 10*l.* as amends, which the plaintiff refused to accept; but no tender was pleaded, nor was the amount paid into Court. The jury found the trespass, and that the damage amounted to 5*l.*

Held, first, that, although neither the defendant nor the commissioners were authorised to take the plaintiff’s land without his consent in writing, yet the defendant was entitled to the protection of the Act; secondly, that the defendant was not bound to plead the tender, or pay the amount tendered into Court.

[See the other cases referred to at pp. 130, 133, ante.]

Goody v. Penny, 9 M. & W. 687.—1842.

Authority to
 sue by clerk.

A navigation Act imposed certain duties on coals, &c., landed within a certain district, to be paid to commissioners therein named, who were empowered to sue in the name of their clerk for the time being for “any penalty or sum of money due or

payable by virtue of this Act." It was held, that an action of debt might be brought in the name of the clerk for arrears of rates and duties: although, by another clause, a power was given of detaining and selling the vessel and goods in case of neglect or refusal to pay the rates and duties.

ACTIONS, &c

Truwhitt v. Depree, 2 C. & P. 557.

Where certain commissioners under a private Act were authorised to sue and be sued by their clerk, it was held not necessary, at the trial of an action brought in the name of the clerk, to prove that he sued by the commissioners' authority.

Authority to
sue by clerk.

Cortis v. Kent Waterworks Company, 7 B. & C. 333.—1827.

A local Act directed that the commissioners, or the major part to them, assembled at any meeting, not being less than thirteen, might, by writing under their hands, appoint a treasurer. It was held that an appointment of a treasurer, signed by a majority of seventeen commissioners present at a meeting, was valid, and that it need not be signed by thirteen.

Authority to
sue by trea-
surer.

The Act also directed actions to be in the name of the treasurer; and it was held that the treasurer was authorised to sue upon an order made before he was appointed.

Whitmore v. Wilks, Moo. & M. 214.

Under an Act of 50 G. 3, c. 149, by which trustees were empowered to sue and be sued in the name of their treasurer for the time being, and it was provided, that actions might be brought by the treasurer for the time being, and that they should not abate or be discontinued by his death or removal, and that the treasurer for the time being should always be deemed plaintiff or defendant; the trustees had been changed since the cause of action occurred, and new treasurers had been appointed since the change; but it was held that an action could be maintained in the name of the new treasurer.

Authority to
sue by trea-
surer.

Paul (Clerk to Trustees, &c.) v. Meek, 2 Y. & J. 116.—1828.

This was an action of debt for recovery of tolls. The first count of the declaration stated, that, on &c., by indenture between the trustees of the turnpike road of the first part, and the defendant and J. S. of the second part, the trustees demised tolls to the defendants from &c., for one year, yielding and paying to the

Evidence.

ACTIONS, &c. trustees 928*l.* yearly, by equal monthly payments, &c. The second count was for money had and received, and the third was upon an account stated. The defendants pleaded, first, *nil debet*; secondly, an eviction of the receipt of the tolls; and, thirdly, payment. The Court held, that the production of a counterpart of lease of the tolls, signed by the defendant, was sufficient, if properly stamped as a counterpart, although the lease itself might be improperly stamped; and a verdict was entered for the plaintiff. — See *ante*, p. 44, n. (m).

Pearse v. Morrice, 3 B. & Ad. 396.—1832.

Evidence.

In an action of covenant by the clerk to the trustees against a surety of the lessee, to recover arrears of tolls, the plaintiff in his declaration made profert of the indenture in these words: "Which said indenture, sealed with the seal of the defendant, the plaintiff now brings here into Court." The plaintiff at the trial produced a counterpart, executed by the defendant and the lessee, but not by the trustees; and the Court were of opinion that this was no variance. The plaintiff, as lessor, must be understood to make profert of the part of the indenture executed by the lessee; and the terms of the declaration were sufficiently answered by the production of the counterpart. The deed, when produced, had a thirty shillings stamp only, and it was contended that the stamp should have been thirty-five shillings; but the Court held it sufficient, the instrument produced being a counterpart only, and not a lease.

Rex v. Hants Justices, 1 B. & Ad. 654.—1830.

Appeal.

Thomas Saywell was, on the information of Samuel Gloyn, convicted by four justices of the county of Southampton, for having, at a turnpike gate, demanded, received, and taken from Gloyn a toll not authorised by law; and was by the said justices adjudged to have forfeited a sum exceeding forty shillings, namely, 2*l.* 1*s.* Against this conviction Saywell appealed. Gloyn did not appear at the sessions; and on proof of notice of appeal, and that recognizances were duly entered into, pursuant to 4 G. 4, c. 95, s. 87, the sessions quashed the conviction, and ordered Gloyn to pay the appellant Saywell 10*l.* costs. An application was made to the justices, at the April quarter sessions, 1830, to issue a distress warrant to enable Saywell to recover the costs. The justices having refused, a rule nisi was obtained for a mandamus to the justices of Hants, to issue a warrant of distress for levying on the goods of Gloyn 10*l.*, so adjudged by the justices to be paid by Gloyn to Saywell.

It was contended by the counsel for the defendants, that as the 3 G. 4, c. 126, s. 143, provides for an appeal where the penalty is more than 5*l.* and takes away the certiorari when the penalty

does not exceed 5*l.*, that there could be no appeal when the penalty is under that sum; and that, as the 4 G. 4, c. 95, s. 87, requires the notice of appeal to be given to the magistrates, they, and not the informer, were subject to the costs of appeal. But the Court overruled both the objections, and made the rule for a mandamus absolute.

Lord *Tenterden*, C. J.—I entertained some doubt during the argument, whether there could be an appeal to the sessions in this case; but on further consideration, it seems to me that the provision taking away the appeal expressly in cases where the penalty does not exceed 40*s.*, manifestly shews that it lies in cases where the penalty exceeds that sum. The next question is, whether the justices had power to charge the prosecutor with costs? It is true the Act directs notice to be given to the justices, not to the party prosecuting or defending. But it would be a great anomaly to cause a justice, who acts *bonâ fide* in the discharge of his judicial duty, to pay costs. The question is, what is the meaning of the words, “the party appealing or appealed against?” The party appealing here is manifestly the party convicted; and if that be so, the informer is the only person who can satisfy the words, “party appealed against.” He must, therefore, pay the costs, if such costs are adjudged. Here they have been adjudged by the justices; and as they shew no reason why they should not give the party appealing the means of recovering what they have so adjudged to him, the rule must be made absolute.

Rex v. Yorkshire W. R. Justices, 5 B. & Ad. 1003.—1834.

The General Turnpike Act, 4 G. 4, c. 95, s. 87, gives an appeal to the sessions to any person who shall think himself aggrieved by any thing done by any two justices in pursuance of that Act, or any local turnpike Act; and declares that the determination of the sessions shall be final and conclusive, and that no proceedings to be had in pursuance of that Act shall be recovered by certiorari. The sessions, on appeal against a certificate of two justices that a turnpike road made under a local Act had been completed and was fit to be travelled upon, having decided that the certificate was void in point of law, and having refused to go into the merits of the appeal in point of fact, the Court of King's Bench refused to grant a mandamus to them to hear the appeal, on the ground that their decision was contrary to the local Act, considering that 4 G. 4, c. 95, s. 87, made their decision final.

APPENDIX III.

MISCELLANEOUS.

REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF LORDS ON THE LAWS RELATING TO TURN- PIKE TRUSTS.

BY THE LORDS' COMMITTEES appointed by a select committee to examine the turnpike returns now upon the table, and the abstract thereof, and to consider whether any alterations can be usefully made in the law relative to turnpike trusts, and to report thereupon from time to time to the House.

Ordered to Report.—That the committee have further considered the accounts referred to them, and have also obtained valuable information from the witnesses who have been called before them, which they have subjoined to their report.

The committee have not failed to observe from the evidence adduced, the great benefits which have arisen from the consolidation of trusts round the metropolis; the great saving of expenditure which has accrued from it; the consequent reduction and equalisation of the rate of toll, and the increased confidence and security of the creditors of the roads; they therefore cannot abstain from recommending that the trusts leading from the metropolis should be placed under the control of the Metropolis Roads Commissioners (*a*).

(*a*) The consolidation of these trusts was recommended by a Committee of the House of Commons on the highways in 1819. In the following year a bill was brought in for that purpose, including all the roads in the neighbourhood of the metropolis. In its progress through Parliament amendments were carried for

One of the greatest evils in the present road system is the number of trusts, as well as their limited range and extent.

The committee would therefore recommend every consolidation of trusts which their localities and other circumstances will permit (*b*). Such consolidation would secure a more uniform and efficient administration of the trusts, by enabling the trustees to employ more competent and skilful officers, and a reduction of useless expenditure, by diminishing the number of clerks and other officers, and the outlay incurred by the renewal of so many local Acts.

They consider it expedient that the several Acts which have been passed for the amendment of the General Turnpike Act, passed in the third year of the reign of his late Majesty King George the Fourth, should be consolidated and amended (*c*), and that provision should be introduced

limiting its operations to the roads in the neighbourhood of London north of the Thames, and in that amended state it became law; 7 G. 4, c. cxlii (*local*). This Act is published, with the amended Act, 10 G. 4, c. 59, uniform in size with the present work.

(*b*) See 12 & 13 Vict. c. 46, and 13 & 14 Vict. c. 76, ss. 6, 7, for facilitating the union of trusts, ante, pp. 303, 313.

(*c*) On the subject of the consolidation of trusts, and the amendment of the General Turnpike Act, Mr. Bicknell's evidence, of which the following are extracts, is particularly deserving of attention.

“Have you any suggestions to make respecting an amendment of the present general turnpike law?”—“Yes. In the first place, the general law requires amendment by a consolidation of the Acts. There are ten Acts comprising the general turnpike law, and those Acts might be consolidated into one; and if these general turnpike Acts are properly revised and consolidated, it would, I conceive, render waste paper at least a thousand local Acts of Parliament. There are 1119 trusts, each of which has one, and some two, and some three Acts; and if the general turnpike Acts were consolidated, as they might be, into a general code of laws for the general regulation of turnpike trusts, that would, in my opinion, render perfectly useless at least 1000 of those Acts of Parliament.”

“Could not a general law be introduced which would apply to all local trusts?”—“The General Turnpike Act was intended for that; but the details of turnpike trusts were not so well known then as they are now, and the Act was not so perfect then as it might have been, and it is now very imperfect in comparison to what it

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therein, directing that the annual accounts of every turnpike trust should be made up from the 1st of January to the 31st of December in each year (*d*).

(*d*) A provision to this effect has been made in the 3 & 4 W. 4, c. 80. See ante, pp. 266, 308.

might be." "Are there any particular circumstances within your knowledge that would render local Acts necessary, on the supposition of one general turnpike Act being passed?"—"I think there are certain circumstances which would render some local Acts necessary; but in general the local Acts have no special provision which might not be taken care of in a general Act." "Therefore, in your opinion, there are circumstances which would still render local Acts necessary?"—"In some cases, where you touched a particular interest by a local Act, you must provide some compensation for the particular party; and there are circumstances in special cases which could not come under a general law, which must be provided for by a local Act." "Could not that be provided for by giving a power to the quarter sessions?"—"I was about to suggest that very circumstance. Local Acts of Parliament have this misfortune attending them, they are always for a term of years only. If a trust is very heavily charged, there is nothing to force the trustees to renew the term of the Act of Parliament; the consequence might be, that whoever lent money upon it would lose their money; that is not fair towards the public. A general Act to amend the present law should provide with respect to making all trusts act upon one consistent principle, not the uncertain principle which occasions all the variations in the present returns. The turnpike law, with respect to borrowing money upon interest, requires great alteration; as it is at present, the law is inequitable and oppressive; it might almost be said that the law itself is fraudulent, for it induces persons to lend money on a supposed Parliamentary security, which is no security at all." p. 19. "The first consideration on the subject seems to be how good roads are to be made throughout the kingdom; for which purpose I think the present system of local trusts and trustees the best; and the reason I would give for that is, that, where that mode has been departed from, it has failed, as in the case of the Shrewsbury and Holyhead road, where they have most excellent roads, the debt upon that trust being, I think, 376,000*l*. and the tolls 6000*l*. a year; that debt never can be paid off by its present tolls. The committee will see how impossible it is to pay it off, when it ap-

That local Acts should, unless in special cases, be no longer limited as to duration; that no officer should be removed unless upon notice conformable to the clause in the said General Turnpike Act (3 Geo. 4); that estimates of all projected works exceeding fifty pounds be approved by the trustees before their execution; and that an estimate

appears that about 100,000*l.*, I think, of that money is interest added to the former principal. There is a case where an ordinary local trust has not been established, and yet, though under a different management, the same mischief exists of a large mortgage debt upon tolls, which cannot even pay the interest; and even if they applied double the tolls they have, they could not keep down the interest. I would further submit to the committee, that the classification of public roads is not founded on any sound principle whatever. They are now divided into turnpike roads and parish highways. Many turnpike trusts now under separate local trusts ought, with reference to their more easy repair and to the saving of expense, either to be united to other trusts, or considered as parish highways; while many highways which are kept in repair exclusively at the expense of individual parishes ought, with reference to other roads in similar circumstances, to be maintained from more general funds. The correct and more natural division of public roads would be into main or county roads, and branch roads,—all roads required for general public use and convenience being classed under the first head, and roads of more limited and local utility being classed under the latter division." p. 22.

"There are a great many roads now turnpike roads, which I would put on parishes, and I would take no statute duty whatever from the parishes. A great many branch roads have been put on turnpike trusts formerly, which would not be done now, probably; and I think those branch roads should be returned to the parishes, or the trusts will never get out of debt. Before any general law is made for the turnpike roads, or at the same time, I submit there should be a revision of the extent and compass of turnpike roads, which at present are contrary to all principle. I take the roads which should continue main or county roads to be the direct communication from one part of the kingdom to another, and not the cross communication between two or more small towns or villages; and the Court of quarter sessions should have the means of apportioning the repairs of such latter roads between parishes, and not that one parish should repair five or six miles of branch road and another one mile, where each parish is equally benefited by the road." p. 23.

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of the current year's expenditure be laid before the trustees and approved of by them at their general annual meeting (e).

The committee have contemplated with alarm the consequences of the great and increasing amount of debt on many roads (f), and are of opinion that the trustees of roads ought

(e) The estimate of the current year's expenditure is now required by the 3 & 4 W. 4, c. 80. See ante, p. 269.

(f) "The annual incomes, by the returns of 1821, were 970,618*l.* By the returns of 1829 they amounted to 1,495,854*l.* The debts of 1821, of all descriptions, were 3,874,255*l.* By the returns of 1829, they may be stated in round numbers at 8,000,000*l.*" "The balances in the hands of the treasurers in 1821 were 174,000*l.* In 1829 the returns stated them to be 343,896*l.* The arrears of interest in 1821 were 337,170*l.* The unpaid interest in 1829 was 821,586*l.* 19*s.* 7*d.*"—"There are 173 trusts, the mortgage debt of which is 929,554*l.*, the whole of the interest due upon which is more than three years standing, varying from three to sixty years. The interest due on the 929,554*l.* is 527,162*l.*—*Mr. Irish's Evidence*, p. 32. "There are 492 trusts, of which the expenditure exceeds the income by 157,683*l.*, and the whole excess of expenditure above income, taking all the trusts in England and Wales, is 44,276*l.* a year."—*Mr. Bicknell's Evidence*, p. 19. Some of these calculations were corrected by Mr. Irish on a subsequent examination, when he handed in the following Comparative Statement of the trusts in England and Wales, founded upon the returns made to Parliament in 1821 and 1829.

1821.	1829.	
Trusts . . . 1,025	1,119	Increase . . . 94
Miles* . . . 20,875	19,798	Decrease . . . 1,077
Acts of Parliament, 2,485	3,783	Increase . . . 1,298
Debts . . . 5,330,493 <i>l.</i>	7,785,171 <i>l.</i>	Increase . . . 2,454,678 <i>l.</i>
Income . . . 1,088,767 <i>l.</i>	1,455,293 <i>l.</i>	Increase . . . 366,526 <i>l.</i>
Expenditure 1,034,124 <i>l.</i>	1,678,054 <i>l.</i>	Increase . . . 643,930 <i>l.</i>
Income above Expenditure . 54,643 <i>l.</i>	44,276 <i>l.</i>	
Debts per Mile . . 255 <i>l.</i>	392 <i>l.</i>	Increase, 137 <i>l.</i> per Mile.
Income per Mile . . 52 <i>l.</i>	73 <i>l.</i>	Increase, 21 <i>l.</i> per Mile.
Expenditure per Mile, 50 <i>l.</i>	85 <i>l.</i>	Increase, 35 <i>l.</i> per Mile.

* *Miles.* From the manner in which the account of 1821 was made up, it is not improbable that the distance was computed instead of being taken by admeasurement.—*Evidence*, p. 175.

Mr. Bicknell considers that one of the best remedies for paying

not to be permitted to borrow money on the security of the tolls exceeding in amount three years revenue of such tolls.

The supposed benefits to be derived from limiting the weights to be conveyed on roads have been so much defeated by the practice of compounding for overweightes, that

off the large amount of debt upon the roads, is to give a power to the trustees to convert a part of their mortgage debt into life annuities, and to restrict the mortgage debts in future to one year's income.—“So many of the trusts owe debts of enormous magnitude without any surplus income, that, with respect to them, either the county should contribute to their discharge, if necessarily incurred for county improvement, or they should be considered branch roads, only, until some other arrangement is made, so that the general improvement of main roads should not be stopped by their deficiencies.” “If a great general improvement in a turnpike road is necessary, which requires more than one year's income of any trust, it ought to be done by a contribution from all the other trusts on the same road, such contribution to be made proportionally with reference to the tolls of the respective trusts; and such great improvement ought not to be taken without the sanction of the Court of quarter sessions, or some other paramount authority, to which all the trusts interested might appeal, or be heard, upon the improvement contemplated being determined upon. All trusts ought to make up their accounts monthly, and have them certified at a general meeting, the same being first examined by a committee of trustees, called the committee of accounts. Duplicates of the yearly accounts to be transmitted to the Secretary of State for the Home Department, or the Post Master General, besides those to whom they are now sent; and every statement so furnished ought to contain the amount of tolls actually taken.”—*Evidence*, p. 23.

It appears by the returns, that a considerable portion of the debt due on the tolls has been advanced by the Exchequer Loan Commissioners, established by 57 G. 3, c. 54, and subsequent Acts, for making advances towards carrying on public works. Trustees desirous of availing themselves of an Exchequer loan must cause an application to be made to the Commissioners, at the office, South Sea House, Threadneedle Street, London, stating the sum required, the purposes for which it is wanted, and the local Act or Acts under which the trustees are appointed.

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they recommend the abolition of the use of weighing engines (*g*).

It appears that combinations have been so successfully organised to defeat the provisions of the said Act of the third year of his said late Majesty's reign with respect to letting tolls, that the committee strongly recommend the adoption of the mode of letting tolls practised in Scotland (*h*).

The measure of employing permanent milemen with occasional assistant labourers on the roads, has combined such indisputable advantages, that the committee do not hesitate to recommend its more general adoption, and submit that such a system might be rendered contributory to objects of general security (*i*).

(*g*) Weighing engines have been abolished on the metropolitan roads and other roads in the neighbourhood of London. *Evidence*, p. 48, &c.—On the subject of wheels the report is silent, probably in consequence of the conflicting opinions thereon. Mr. M'Adam proposes, that "all legislative interference with the size, shape, and breadth of wheels, should be given up." p. 148.—Mr. Stokes, on the contrary, considers that the use of flat, solid wheels should be compulsory, and would in three years reduce the expense of repairing turnpike roads fifty per cent.—p. 121, &c.

(*h*) The mode of letting tolls here referred to is regulated by 1 & 2 W. 4, c. 34. By this Act the trustees are not restricted, as in England, as to the sum at which the tolls are to be put up on the first day of letting, and they are empowered to bid for the tolls themselves, or to let them by private tender.

(*i*) The following is Mr. M'Adam's account of the mode in which milemen are employed :—

"Have you, in any instance, tried the plan of having labourers placed to take charge of particular portions of the road?"

"I have: on the Windsor and Bagshot roads, which commence at the Powder Mill Bridge on Hounslow Heath, and terminate at Golden Farmer's Hill. We have been in the practice for several years past of appointing individual labourers, under the denomination of milemen, to the care of one mile of the road each. These men have a staff with a Number 1, Number 2, and Number 3, progressively, and which they place beside them when they work, so that the first mileman is Number 1, the second Number 2, the third Number 3, and so on to the end of the road. If

The power vested in the trustees to compound with individuals for their tolls, has appeared to the committee to have given rise to abuse, and they recommend that such power should be taken out of the hands of the trustees, leaving it with individuals to make their own arrangement with the lessees.

All the witnesses who have been examined to that point concur in recommending a system of general control over the management of the roads of the kingdom (*k*), with a

these milemen, at any particular season of the year, require any additional assistance from coating being necessary, or scraping, or any particular circumstances, upon the mile, additional labourers are given to them, each of whom receives a staff also, with a letter on it, so that if a traveller or a trustee on the Staines road observes upon the last mileman's staff Number 9, and the assistant labourer's staff with the letter G upon it, he knows that upon that day there are nine milemen, with as many assistant labourers as from the letter A to the letter G, employed upon the road; and we have found a great many practical benefits result from this measure. The assistant labourers, who go to a mileman, have the great advantage of being directed by a man who is well acquainted with the details of road-making. We find that two assistant labourers, when directed by a skilful and practical mileman, are equal to three labourers without it. Once a year, at a general annual meeting, assisted by the individual information of the trustees, they receive a reward of from 20s. to 3*l.* or 4*l.* each, or they are discharged if it is considered that they have been negligent. The hope of the reward, and being attached to a particular mile, produces considerable emulation amongst the milemen, each desiring to have the best mile upon the trust; and we find that a less quantity of materials is consumed by the milemen than any other mode we can adopt."

(*k*) The establishment of a system of general control over turnpike trusts has been repeatedly the subject of recommendation by Parliamentary committees, and from the manner in which it has now been taken up, it seems to require the serious and immediate attention of all persons connected with the revenues of road trusts. With regard to the nature of the proposed control, there are various opinions. Mr. Bicknell proposes simply, that all trusts in the same neighbourhood shall be consolidated; that an officer shall be appointed by Government to examine the accounts of turnpike roads, classifying such accounts, and attend-

REPORTS.

view to prevent an increase of debt, to introduce one general, economical, and skilful course of management, as the

ing, if necessary, at trustees' meetings to obtain information, and to lay such information before the members of his Majesty's Government, but without interfering with the trusts. This, with an amended General Turnpike Act, he considers would answer every useful purpose.—*Evidence*, p. 24. Mr. Stokes recommends a commission of inquiry.—*Evidence*, p. 111. Mr. M'Adam proposes the appointment by his Majesty of a board for inspecting turnpike accounts, appointing general and deputy surveyors, and examining and controlling the affairs of the roads under certain regulations and restrictions; the expense of which board, including the salaries of the commissioners, clerks, and general and deputy surveyors, he calculates would amount to 22,300*l*. The trusts of different counties to be consolidated, and the kingdom to be divided into two parts or general surveyorships, six districts, and 12 deputy surveyorships, with 250 clerks and 500 resident surveyors, &c.—*Evidence*, p. 150. Mr. Irish proposes to place all the turnpike roads in England and Wales under the management of a separate board, or in conjunction with some other board or some body in London, under the control of the Government, the expenses of which board he calculates would amount to 24,650*l*. The turnpike roads to be divided into thirty-four districts, each district to comprise 600 miles of road, and to have an accountant or clerk, and assistant, and five surveyors, at salaries varying from 200*l*. to 400*l*. per annum, and two foremen, the whole to be under the management of the London board. Each foreman, besides his wages, to have a cottage and garden rent-free, and twenty-eight labourers or excavators under his orders.—*Evidence*, p. 59. Whether a board of general control is necessary or desirable, however, will be a question for the consideration of Parliament; but should a board be determined upon, the Editor ventures to suggest, that the principal part of the estimated expenses of its management might be saved by uniting it with some other public board already in existence. As the Government has no interest in the funds as a matter of revenue, all the officers of the establishment might be elected by persons interested in the income and expenditure of the roads; and all legislative enactments for the amendment of the law, or the management of the roads, should have reference to the gradual, but entire abolition

only means of reducing the present great amount of debt, and of relieving the country from the burthen of statute labour and the high rate of toll now levied in many districts. The committee are of opinion that such control would be attended with the most beneficial results, and recommend that measures should be taken to carry the same into effect.

They have directed an Index of the principal matters in the minutes of evidence, and an Appendix of some papers, which they think may throw further light upon the subject referred to them, to be annexed to their report.

of the tolls. And at all events some specific plan ought to be adopted before any further consolidation or extensive alteration in the general laws is attempted.

GENERAL RULES

FOR REPAIRING ROADS.

Issued by order of the Parliamentary Commissioners of Holyhead Roads, &c. with Additions from subsequent Documents.

SHAPE OR CROSS SECTION (a).

REPAIRING.

THE breadth of a carriage-way should be thirty feet, (the Highway Act requires it to be twenty feet at the least),

(a) The bad condition of many of the roads in this kingdom has been attributed to the injudicious application of the materials with which they are made, and the defective form of the roads. These evils might be remedied by the practice of a better system of making the surface of roads, and by the application of scientific principles to their formation. The object in a good road, as far as regards the surface, is to have it smooth, hard, and so flat that a carriage may stand quite upright. These objects are not, in many instances, attained by the present system, because no scientific principles are applied; but it is presumed they are perfectly attainable in all parts of the country. It is proved by all experience, that a road made of broken stones, without mixture of earth, of the depth of 10 inches, will be smooth, hard, and durable.—(*Report on Highways and Turnpike Roads, 14th June, 1811, p. 27.*)

The first operation in making a road should be the reverse of digging a trench. The road should not be sunk below, but rather be raised above, the ordinary level of the adjacent ground; care should be taken that there should be a sufficient fall to take off the water, so that it should always be some inches below the level of the ground upon which the road is intended to be placed. This must be done, either by making drains to lower ground, or, if that be not practicable, from the nature of the country, then the soil upon which the road is proposed to be laid must be raised by addition, so as to be some inches above the level of the water. Having secured the soil from *under* water, the road-maker is next to secure it from rain water, by a solid road made of clean, dry

REPAIRING.
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with side channels nine inches below the surface in the middle of it; and if there is a greater space of ground than thirty feet between the fences, it should be formed into footpaths and levelled as directed in subsequent rules. The best line for the cross section of the workable roadway is a segment of a flat ellipsis, as this shape assists the water to pass from the centre towards the sides, without making the middle of the road too round, and greatly contributes to the drying of the road, by allowing the action of the sun and air to produce a great degree of evaporation. In giving a road a proper shape, surveyors ought always to use a level (see Plate II.), in order that the surface may be of one uniform curvature from side to side, without the smallest deviation, in any one spot, from the prescribed line of the cross section. (See Plate II., fig. 1, and Plate I., figs. 3, 4, 5.) This instrument should be constantly in the hands of the workmen, and never out of the mind of the surveyor; for the road will never be perfect so long as a single spot of its surface shall not be according to the exact line which is pointed out for its transverse or cross section.

MATERIALS.

Where the materials are quarry or field stones, the hardest part of them only should be used. Each stone should be so broken that it may, in its largest dimensions, pass through a ring of two inches and a half in diameter. Hammers with slender handles, light, and well steeled, must be made on purpose for breaking them. This work ought always to be done by measure, either at the quarries or in proper depôts, made for the purpose on the sides of the road.

Where the materials consist of gravel, the stones only which exceed one inch and a half in size should be taken from the pits for the use of the middle part of the road. These ought to be raked together as the gravel is thrown up by the workmen. This process will, in most cases,

stone or flint, so selected, prepared, and laid, as to be perfectly impervious to water; and this cannot be effected unless the greatest care be taken that no earth, clay, chalk, or other matter that will hold or conduct water, be mixed with the broken stone, which must be prepared and laid so as to unite by its own angles into a firm, compact, impenetrable body.—(*M'Adam on Road-making*, pp. 50, 51.)

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save expense in riddling and washing the gravel. All the smaller stones and gravel may be used for the sides of the road and the footpaths. Every large gravel stone, exceeding two inches in diameter, ought to be broken. A pronged shovel, as described in Plate II., may be used for putting the stones into the barrows. Surveyors should pay very particular attention to this plan of managing gravel materials.

DISPOSITION OF MATERIALS (b).

1. Where a road has not a solid and dry foundation, it should be constructed anew. Upon the bottom of it a pave-

(b) It is well known to every skilful and observant road-maker, that if strata of stone of various sizes be placed on a road, the largest stones will constantly work up by the shaking and pressure of the traffic, and that the only mode of keeping the stones of a road from motion is, to use materials of a uniform size from the bottom. In roads made upon large stones as a foundation, the perpetual motion or change of the position of the materials keeps open many apertures through which the water passes. It has also been found, that roads placed upon a hard bottom wear away more quickly than those which are placed upon a soft soil, and that a road lasts longer over a morass than when made over rock.—(*M'Adam on Road-making*, pp. 46, 47, 5th ed.) It is proper to observe, that men eminent for their skill and practical knowledge differ upon this point, as some contend that a *pitched* foundation, that is, one formed of large stones, is necessary to make a substantial and good road, because it cannot be made non-elastic without pitching. Such a plan may be useful upon a road which is liable to great and heavy traffic, and where there are ample funds at hand to meet the expense; but when adopted there should always be such a quantity of broken materials placed upon the road as will prevent the upper substance from being sacrificed between the heavy waggon wheel above, and the hard pitching stone beneath. In a pitched foundation some of the stones are liable to sink deeper into the sub-soil than the rest, and will consequently cause holes to appear in the surface, which would not occur where a body of flint, broken small, is the substratum. If one substance used in road making be harder than another, that substance should be upon the surface, and not at the foundation; to lay the softer upon the harder must have the

ment should be made, seven inches deep in the middle, and three inches at the end. Soft stones will answer. This

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effect of sacrificing the inferior material.—(*Penfold on Roads*, pp. 8, 9.)

Without a sufficient depth of consolidated materials there will not be a resistance equal to the weights which a highway is subject to. There must be weight to resist weight. This may be regulated by the degree of consolidation which the body of the road has, by skill, acquired. If the weight of metal forming the substance be of an imperfect quality, more will be required than when sound and clean. In proportion to the quantity of deleterious matter contained in the body must the thickness be increased. Any matter that is not of a sound nature has no power in road-making, and, therefore, the hard materials alone contained in the road's substance can be calculated upon as possessing the quality to resist weights.

If an inefficient thickness of good materials be allowed to continue for any time, the result must be a heavy and imperfect state of road. The power will not be equal to carry the weights, and the condition of the surface will be worse and worse, until the whole body will be cut through, ploughed up as it were, and become impassable. It will be beyond the skill of any one to keep a sound road, when the strength is unequal to resist the passing pressure. Experience has taught, that there can be no real security against a road giving way, taking the year through, unless twelve inches at least of good sound consolidated materials form the body of a road; and this upon a foundation rendered sound and dry by effectual drainage. In many instances there may be less substance than this, and the surface may appear perfectly sound and level to the eye; but in the event of a severe winter, such a state of things will speak for itself. It will make itself manifest by the *blowing up* of the road at the giving of a long frost, when parsimony will prove itself to be but foolishness. Provide, then, the degree of substance before mentioned, and rest satisfied that enough has been done in this particular.—(*Penfold on Roads*, p. 10.)

The proper mode of spreading is this: To cause the load to be shot down a short distance from the place upon which you wish the materials finally to be spread: and to direct the spreader to cast every shovel-full from him equally all over the surface, and in such a manner as he would do if he were sowing wheat broad-

REPAIRING. pavement should be carefully set by hand, with the broadest end of the stones down; the cavities should be filled with stone chips, to make all level and firm, and no stone should be more than five inches broad on its face. Over the eighteen centre feet of this pavement, six inches of stone, or of pebbles of the hardest quality, broken of a size that will, in their largest dimensions, pass through a ring of two inches and a half in diameter, should be laid. The six feet of the road, on each of the eighteen centre feet (making in all thirty feet), may be made with good clean gravel, or small stones: there should be laid over the whole a coating of small gravel, one inch in thickness. (See Plate I. fig. 3.)

2. Where a road has some foundation, but an imperfect one, or is hollow in the middle, all the large stones appearing on the surface of it should be raised and broken; the eighteen centre feet of it should then be covered with a coating of broken stones, sufficient to give it a proper cross-sectional shape, and to make it solid and hard. A road should have a body, of fourteen inches in thickness, of strong materials in the middle, and of five inches in thickness at the outside edge.

3. Where a road already has a good foundation, and also a good shape, materials should be constantly laid upon it, for the purpose of filling ruts and hollow places, in thin layers, as soon as they appear. No layers or beds of stone should ever be laid on except in wet weather, between the 1st of November and the 1st of March. In this way, a road, when once well made, may be preserved in constant repair at a small expense (c).

cast. The road will then be not thicker in one place than another, and a section will be produced perfect and true.—(*Penfold on Roads*, p. 20.)

(c) The value of Mr. Macneil's pyrameter or road measurer is too little known; it would be of the utmost value to road trustees and owners, to have such an instrument run over their roads two, three, or four times in each year, for the purpose of ascertaining the power of traction required for the movement of a certain weight along the road; a piece of knowledge as necessary for road owners as the valuation of stock is to the tradesman, or the survey of machinery and apparatus can be to the manufacturer. This beautiful instrument exhibits on dials the state of the road's surface, resistance, gravitation, collision, bearings, distance, and time.—(*Gordon's Tract on Turnpike Roads*.)

4. Where the stoned or gravelled part of a road, over which the carriages commonly pass, is less than thirty feet, it should be widened with layers of broken stones, six inches in thickness, to that breadth; first digging away the earth, and forming a bottom for them with pavement or rubble-stones. REPAIRING.
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DRAINAGE.

Every road should be defined by side channels, as in Plate I. fig. 3, or Plate II. fig. 1. Where the road is not yet defined, the side channels should be made thirty feet asunder, and a sod border twelve inches wide and nine inches high above the bottom of the side channel should be made with fresh sods, laid on their edges, and with a slight inclination from the road, so as to form a body of mould for the grass to grow on. The earth taken up in forming the side channels should be laid behind the sod border, and the road scrapings should also be constantly laid behind it, until a flat mound is established as high as the top of it.

Where the breadth of the road is not already defined by side channels, but only by borders of earth, a row of fresh sods, as before described, should be laid on the face of such earth borders.

All ditches or main drains ought to be on the field side of the road fences, and to be connected with the natural water-courses of the country. Stone drains and culverts under the road should be made in sufficient numbers to prevent any water laying on or near the road, and should be continued under the fences into the ditches.

In order to keep a road perfectly dry, openings of mason-work should be made from the side channels of the road into these cross-drains, to carry off the water from the surface of it. The bottoms of the cross-drains should be well paved, particularly at the openings.

It ought never to be forgotten, that, in order to have the surface of a road perfect, it must be kept completely dry.

All land springs ought to be carried from the sight of the road by under-draining.

In the months of May and October the side channels and other water-courses of the road should all be cleaned out; and all the weeds and grass should be taken out of the side-parts of the road way.

REPAIRING.

FOOTPATHS.

Footpaths should be made by degrees with the road scrapings, and be at the least five feet wide: and with a perfectly smooth surface, having an inclination two inches towards the road, with a coating of gravel six inches thick. If the surface be more than nine inches above the bottom of the side channel of the road, it should be lowered.

WASTE OR SIDE PIECES.

The space between the sod border and the fence of the road should be made quite smooth,—either flat, or with a moderate and uniform inclination, according to the general shape of the ground. Where this space is now very uneven, the whole should be dug over and smoothened. Hay-seeds should be sown on it; and any mischief that may afterwards be done by cattle, should be constantly repaired by new smoothening the surface.

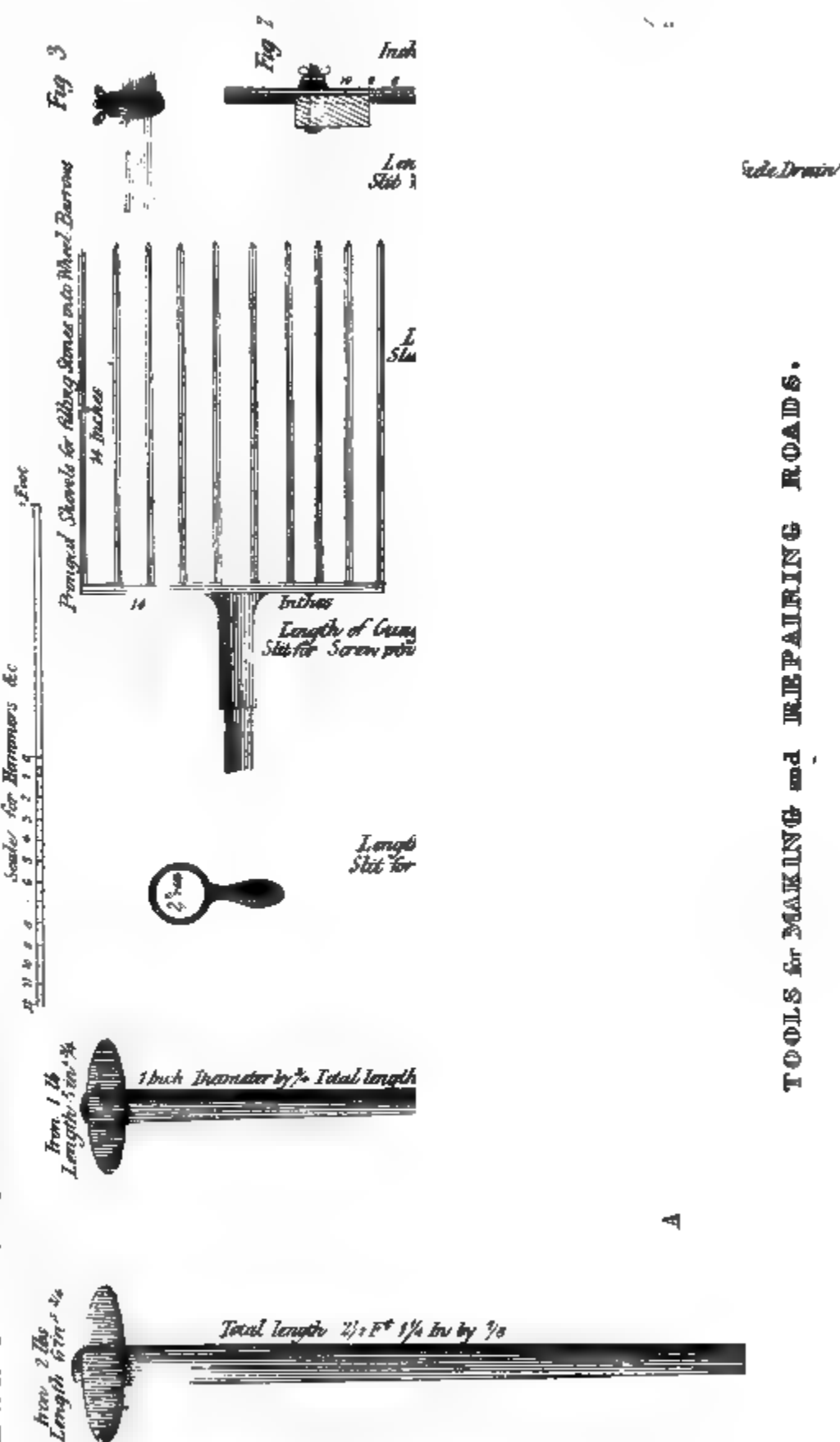
Where the soil is clay between the sod border and the fence, the road scrapings should be spread smoothly over it, and in small quantities at a time, so as to harden the surface and at the same time not to kill the grass.

TREES AND FENCES.

It is absolutely necessary to remove trees from the sides of roads, and to keep the fences under five feet in height. Not less than twenty-five per cent. of the expense of repairing the roads is incurred by the trees and the improper state of the fences keeping the roads wet, and by that means occasioning the rapid destruction of the materials.

MANAGEMENT OF LABOUR.

All labour by day wages ought, as far as possible, to be discontinued. The surveyors should make out specifications of the work, of every kind, that is to be performed in a given time. This should be let by contract, and the surveyors should take care to see it completed, according to the specifications, before it is paid for. Attention to this rule is most essential, and in most cases a great part of the money expended in day labour is wasted.



DESCRIPTION OF PLATE I.

Fig. 1. The cross section of an unimproved old road, which has sixty feet between the fences, but only twenty feet used as a roadway, and the materials laid on without judgment. The footpath badly founded and too high, and the sides literally waste and useless.

Fig. 2. The cross section of a road in a hollow, where there has been some cutting. The roadway only twenty feet wide, without drains of any kind, and the wastes uneven and dangerous.

Fig. 3. The cross section of an improved road, as recommended by Mr. Telford, the real workable roadway being twenty feet wide, with a pavement foundation seven inches deep, laid by hand, and covered for the space of eighteen feet in the middle with clean broken pebbles, and the side parts constructed with a bottoming of rubble stones covered with strong clean gravel. The roadway defined by side channels to an equal breadth, and stone drains made under each side channel. The footpaths kept a regular height above the surface of the roadway, and the wastes or side pieces brought to a smooth surface, and sown with hay seeds according to the foregoing rules. The road soon became perfectly smooth and hard, although it was opened in December, and had to endure a rapid succession of frosts and thaws.

Fig. 4 & 5. Cross sections of a new piece of road made by the Parliamentary Commissioners, with very deep cuttings and high embankments, by which two very bad hills were in a great measure got rid of. The roadway was constructed with a firmly paved bottoming, and the top metaling of stone from Nuneaton, carried about fifty miles by canals.

DESCRIPTION OF PLATE II.

Fig. 1. A, B, C, represents a level, upon the horizontal bar of which are placed four gauges, *a, b, c, d*, made to move perpendicularly to the line A, C, in dove-tailed grooves cut in the horizontal bar. When any one of these is adjusted to project a proper depth below the line A, C, it may be fixed by a thumbscrew, which will retain the gauge in the desired position.—See SHAPE OR CROSS SECTION, ante.

Fig. 2 & 3 shew a section of the horizontal bar, and one of the gauges fixed to a fragment of the horizontal bar, drawn to a larger scale.

REPAIRING.
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Hammers, &c.—After all the large stones have been sledged, and reduced to pieces not exceeding four or five pounds, hammers of the weight of one pound and a half and one pound, with round faces, as shewn in the Plate, are the most useful for breaking them to the size specified in the rules; but for small round gravel stones, a lesser size, say ten ounces, with faces quite flat, and about five-eighths of an inch in diameter, will be found to answer best.

The use of the other tools is described under the title **MATERIALS, &c.**

OBSERVATIONS ON THE STATUTE DUTY

DUE FROM PARISHES TO TURNPIKE TRUSTS.

[From Mr. Penfold's Evidence before the Committee of the House of Commons on County Rates.]

THE demand which a turnpike trust can make upon the several parishes through which the road passes, appears, from what can be collected, to be quite misunderstood by the generality of persons.

At the same time the mode of adjusting it seems quite as easy as the misconception seems great.

I have always looked upon the liability of a parish to contribute towards the support of a turnpike road to be to this extent, viz.—That, passing through the parish, the inhabitants have the advantage of the road for their own use and benefit in moving about from one place to the other within the parish, in the same way as they do on their own parish roads, and consequently they ought in fairness, for such use and benefit, to be liable to keep it in the same state of repair as their own parish roads. But if they wish to make a further use of it in the same way as the public at large do, in travelling from one large town to another, and beyond the limits of their parish, they ought in the same way to be liable to the toll.

A great deal has been said upon the hardship which this contribution to the turnpike trust occasions to the farmers. Now, even in this point of view just stated, can it in reason be considered a hardship, when the farmers are in the enjoyment of the use of the road from day to day, without any contribution saving the statute duty? Do away the statute duty due to the trustees, and the farmers will then be using the turnpike road without contributing anything towards its support, and, indeed, at the expense of the public.

Why should this be so? Did they not, when they took their farms, know that such a duty would be imposed upon them? And did they not make their calculation of the expense attending that taking accordingly? And the same, with regard to their landlords. When they purchased the estate, which the farmer rents of them, did they not calculate that the land would be burthened with this necessary charge, and pay for the estate accordingly?

Where, then, in either point of view, can be the hard-

STATUTE
DUTY.
—

ship? In the first place, they have the use of the road for the duty they are called upon to perform; and in the next, they pay rent less in proportion to this charge laid on upon the land. The fact is, the grievance consists in the mode in which the charge is laid upon them, viz.—in the objectionable form of statute duty.

Now the remedy is very simple, viz.—do away statute duty, and make a rate upon the rental. Let the farmer, as far as regards the parish roads, do his proportion of the horse-work necessary for the repair of those roads, and pay him for the work he does according to its value, that is, a price per cubic yard per furlong, agreeably with a graduated scale drawn out for the purpose.

Pay the turnpike trust its proportion of the money collected by the rate, and let it be regulated upon this sound and fair principle, viz.—Supposing the parish roads cost 500*l.* to keep in good condition, and the number of miles kept in repair for that amount be fifty, and supposing the length of turnpike road through that parish be three miles, then it is easily ascertained;—thus, if fifty miles cost 500*l.*, three miles will cost 30*l.*

It would seem that the inhabitants of a parish might as well complain of having their own parish roads to keep in repair, as to object to keep in repair the turnpike, as far as I propose that they should be liable. Because, would they not be using the turnpike road from day to day free of expense, which they cannot do as respects their own roads? And would it not be unfair and unjust to make the public traveller pay for wear and tear, which is occasioned by a different party?

The origin of the charge upon the parishes appears to have been from this very cause, that the inhabitants of the parishes could use continually the turnpike road without contributing anything towards its maintenance, were it not for the statute duty which was imposed upon them; and therefore they were made liable to contribute as much towards its support as they would have to pay were the road one of their own parish highways.

This mode of looking at the question, and which would reasonably appear to have been the original meaning and intention of the charge, would have, as far as it goes, this useful tendency, viz. to make parishes keep their roads in repair for as little money as possible; for the less they spend upon their own highways, the less they would have to contribute to the turnpike trust.

[See a *Practical Treatise on the best Mode of repairing Roads*, by Mr. Penfold. Published by the Society for the Diffusion of Useful Knowledge, No. 77, Farmer's Series.]

A TABLE OF CALCULATION

FOR REGULATING THE PRICES TO BE GIVEN PER CUBIC YARD
FOR CARTING ON THE HIGHWAYS OF ENGLAND.

[From the same Report.]

It is presumed, that three horses, a man and a boy, with proper carts, &c., should earn 15s. a-day, or, 5s. per horse, when oats sell at 20s. per quarter.

Then, as a horse is to earn 5s. a-day, it must be calculated what he ought to be paid per cubic yard to enable him to do so, or what quantity of work should be done for the money.

A team should travel ten miles out and in for a day's work. This should be done in eight hours, which is at the rate of a mile in forty-eight minutes, or a furlong in six minutes. Six minutes allowed for shooting the load, and shifting the horse from one cart to another each turn. Having, therefore, the length of the day given, and the rate of travelling, with the allowance of time for shooting and shifting, the number of yards which should be carted in the day is easily ascertained.

Thus, the length from the pit to the place of shooting the materials upon the road shall be taken at four furlongs, which, according to the given rate of travelling, will occupy twenty-four minutes, and the shooting, six minutes, equal to thirty minutes. Therefore, 480 minutes, or eight hours, the length of the day, divided by 30, will give 16, the number of turns a team should go in the day, the distance being half a mile from the pit to the place of shooting.

Then two horses with a cart should carry a cubic yard and a half of materials at a time, which will give twenty-four yards in the day. Now, two horses are to earn 10s., as shewn, which, divided by 24, the number of yards to be carted for that money, gives 5d. a yard, the proper price to be given for carting a cubic yard of materials the before-mentioned distance, when oats are at 20s. a quarter.

The motive for making a graduated scale is this: as in carting for parish roads, there are many different parties employed, it would be unjust to pay that person who has to cart materials a short distance no more per furlong than the party who may have to cart a long distance, because a much greater portion of his time would be exhausted in shooting and shifting.

TEAM
WORK.

Distance in Miles and Fur- longa.		No. of Turns a Team should go in a Day.	No. of Cubic Yards with two Horses.	Price when Oats sell at 20s. per Quarter.	Price when at 25s.	Price when at 30s.	Price when at 35s.
				Equal to per Day. 10s.	Per Day 11s.	Per Day 12s.	Per Day 13s.
M.	F.			d. dec.	d. dec.	d. dec.	d. dec.
—	1	40.000	60.000	2.00	2.20	2.40	2.60
—	2	26.666	39.999	3.00	3.30	3.60	3.90
—	3	20.000	30.000	4.00	4.40	4.80	5.20
—	4	16.000	24.000	5.00	5.50	6.00	6.50
—	5	13.333	19.999	6.00	6.60	7.20	7.80
—	6	11.428	17.142	7.00	7.70	8.40	9.10
—	7	10.000	15.000	8.00	8.80	9.60	10.40
1	0	8.888	13.332	9.00	9.90	10.80	11.70
1	1	8.000	12.000	10.00	11.00	12.00	13.00
1	2	7.272	10.908	11.00	12.10	13.20	14.30
1	3	6.666	9.999	12.00	13.20	14.40	15.60
1	4	6.154	9.231	13.00	14.30	15.60	16.90
1	5	5.714	8.671	14.00	15.40	16.80	18.20
1	6	5.333	7.999	15.00	16.50	18.00	19.50
1	7	5.000	7.500	16.00	17.60	19.20	20.80
2	0	4.705	7.059	17.00	18.70	20.40	22.10
2	1	4.444	7.666	18.00	19.80	21.60	23.40
2	2	4.210	6.315	19.00	20.90	22.80	24.70
2	3	4.000	6.000	20.00	22.00	24.00	26.00
2	4	3.809	5.713	21.00	23.10	25.20	27.30
2	5	3.636	5.454	22.00	24.20	26.40	28.60
2	6	3.478	5.217	23.00	25.30	27.60	29.90
2	7	3.333	4.999	24.00	26.40	28.80	31.20
3	0	3.200	4.800	25.00	27.50	30.00	32.50
3	1	3.076	4.614	26.00	28.60	31.20	33.80
3	2	2.962	4.443	27.00	29.70	32.40	35.10
3	3	2.857	4.285	28.00	30.80	33.60	36.40
3	4	2.759	4.138	29.00	31.90	34.80	37.70
3	5	2.666	3.999	30.00	33.00	36.00	39.00
3	6	2.580	3.870	31.00	34.10	37.20	40.30
3	7	2.500	3.750	32.00	35.20	38.40	41.60
4	0	2.424	3.636	33.00	36.30	39.60	42.90
4	1	2.353	3.530	34.00	37.40	40.80	44.20
4	2	2.286	3.429	35.00	38.50	42.00	45.50
4	3	2.222	3.333	36.00	39.60	43.20	46.80
4	4	2.162	3.243	37.00	40.70	44.40	48.10

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For every waggon, wain, cart, or such carriage, the felloes of the wheels whereof shall be	less than 4½ inches, the same toll as	the tolls granted by the local Act
	4½, and less than 6 in. ¼th less than	
	6 inches or upwards ⅓rd less than	

4. But where any local Act directs a higher or a lower rate of tolls on such carriages to be taken, and the additional tolls in respect thereof authorised by the old General Turnpike Act shall not have been collected, the tolls directed by such local Act shall continue to be collected without the additional tolls for narrow wheels authorised by the 3 G. 4, c. 126 . . . 162

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	Per cwt.
	s. d.
For the 1st and 2nd cwt.	0 3
— above 2 and under 5 cwt.	0 6
— above 5 and under 10 cwt.	2 6
— above 10 cwt.	5 0

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- 1. Weights to be allowed in winter and summer, viz.— 11, 12

		From 1 May to 31 Oct.		From 1 Nov. to 30 Apr.	
For every		tons	cwt.	tons	ct.
9-inch wheeled	Waggon	6	10	6	0
	Cart	3	10	3	0
6 do. do.	Waggon	4	15	4	5
	Cart	3	0	2	15
4½ do. do.	Waggon	4	5	3	15
	Cart	2	12	2	7
Narrower do.	Waggon	3	15	3	5
	Cart	1	15	1	10
Four-wheeled Spring Carriage for goods		4	5	3	15

2. Drays with two wheels of not less than four inches and a half breadth, drawn by not more than three horses, and used within the bills of mortality, to be allowed at all times, 2 tons 16 cwt. . 13
3. The following additional tolls to be charged for overweight:— 13

	Per Cwt.	s.	d.
For the 1st and 2nd cwt.	0	0	3
— above 2 and under 5 cwt.	0	0	6
— above 5 and under 10 cwt.	2	0	6
— above 10 cwt.	5	0	6
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6. Nor to carriages conveying only one piece of iron, or other metal, or many metals wrought into one piece . 169
7. Nor to carriages conveying ordnance or public stores . 28
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4. And carriages, the fellies of the wheels whereof are less than six inches broad, to pay one-fourth more than six-inch wheeled carriages . 8
5. Where trustees shall not, previously to the passing of the 3 G. 4, have collected the additional tolls on narrow wheels, directed by the old General Turnpike Act, and their local Act does not provide a scale of tolls, they may, from and after the 1st Jan. 1824, continue to collect as follows:— 161

For every waggon, wain, cart, or such carriage, the fellies of the wheels whereof shall be	$\left\{ \begin{array}{l} \text{less than } 4\frac{1}{2} \text{ inches, the same toll as} \\ 4\frac{1}{2}, \text{ and less than } 6 \text{ in. } \frac{1}{2} \text{th less than} \\ 6 \text{ inches or upwards, } \frac{1}{3} \text{rd less than} \end{array} \right.$	$\left\{ \begin{array}{l} \text{the tolls granted by the local Act.} \end{array} \right.$
--	--	---
6. But where any local Act directs a higher or a lower rate of tolls on such carriages to be taken, and the additional tolls in respect thereof authorised by the old General Turnpike Act shall not have been collected, the tolls directed by such local Act shall continue to be collected without the additional toll for narrow wheels authorised by the 3 G. 4, c. 126. . 162
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10. And toll collectors allowing

waggon to pass before measurement to forfeit 5*l.* . . . 11

11. Regulations as to wheels not to extend to any chaise-marine, coach, landau, berlin, barouche, sociable, chariot, calash, hearse, break, chaise, curricule, gig, chair, or taxed cart, market cart, or any cart not drawn by more than one horse or two oxen . . . 169

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